BY PACIFIC MEANS

THE IMPLEMENTATION OF ARTICLE TWO OF THE PACT OF PARIS

ADDRESSES DELIVERED AT
THE FLETCHER SCHOOL OF LAW AND DIPLOMACY
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BY

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"The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except *by pacific means.*"

"Les Hautes Parties Contractantes reconnaissent que le règlement ou la solution de tous les différends ou conflits, de quelque nature ou de quelque origine qu'ils puissent être, qui pourront surgir entre elles, ne devra jamais être recherché que *par des moyens pacifiques.*"

ARTICLE TWO OF THE PACT OF PARIS

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FOREWORD

At a time when the outlook for international peace and amity appears to many to be so decidedly unpromising, it is heartening to have from such an authority as Professor Manley O. Hudson a constructive view of the functioning of existing mechanisms for the settlement of international disputes. His comparison of accomplishments in this direction since the Treaty of Versailles with similar efforts in pre-War years will inevitably tend to inspire a measure of hope and courage in the minds of all who, placing these recent attainments in perspective, reflect on the slow and halting course of human progress.

The text of this volume on developments in provisions for the pacific settlement of international disputes comprises four lectures delivered by Professor Hudson at the Fletcher School of Law and Diplomacy in March of the present year. To these have been appended a body of illustrative and significant documents for the convenient use of students of pacific means in the settlement of international disagreements. The officers of the Fletcher School, which is administered by Tufts College with the coöperation of Harvard University, find considerable satisfaction in presenting to a wider audience this well-founded treatment of a timely and important subject.

Halford L. Hoskins, *Dean*

Fletcher School of Law and Diplomacy

INTRODUCTION

LAST September I had the honor of presiding over a series of meetings of the International Law Association, held at Budapest, devoted to a consideration of the effect of the Briand-Kellogg Pact of Paris on international law. At the conclusion of those meetings, several hundred lawyers gathered from all over the world declared that by participation in the Pact of Paris "sixty-three States have abolished the conception of war as a legitimate means of exercising pressure on another State in the pursuit of national policy, and have also renounced any recourse to armed force for the solution of international disputes or conflicts."[1] This declaration is a welcome indication of the willingness of the legal profession of our time to revise some of the conceptions on which international law and international relations have been based in the past, and it stands as an earnest of lawyers' desire to coöperate in shaping the international law of the twentieth century to meet the needs of a twentieth-century international society.

Perhaps it is yet too early for us to foresee the main lines of twentieth-century developments in international relations. If the first decade of this century seemed to warrant some hopes of a better international order than had previously prevailed, such hopes were entirely dashed by the events of the second decade. The severity of the process produced its own reaction, however, and

[1] See International Law Association, *Briand-Kellogg Pact of Paris, Articles of Interpretation as Adopted by the Budapest Conference* (1934).

the third decade of this century was distinguished by the launching of a determined effort to lay new foundations, to organize the world for the maintenance of peace. The success which has attended that effort can be appreciated only by those who are familiar with the goals pursued during the previous half-century, and it is not surprising that much of our thinking about international relations proceeds with little account being taken of what has been accomplished.

We are now well into the fourth decade of the century. It is a period of great confusion, both in aims and in ideas. Every current which one can detect has its crosscurrents. Formidable challenge is being offered to many of the basic conceptions of national policy and national economy. A large part of the world proceeds with the pursuit of policies and practices which may tend to undermine the legal basis of international order. Yet, through a maze of conflicting tendencies, one may be warranted in trying to trace certain more or less consistent developments which are taking place, and with a *caveat* as to refraining from prophecy one may be justified in attempting their appraisal on tentative lines. Such an appraisal cannot treat aspirations as accomplishments; it cannot turn tendencies into *faits acquis;* it cannot ignore the uncertainties which stand between becoming and being; but it may assist us to unravel threads in which a certain historical continuity still persists.

The Paris Treaty for the renunciation of war as an instrument of national policy stands out in the minds of many people as the most important international act since the Covenant of the League of Nations. If it does

not represent a revolution in international affairs, it furnishes—perhaps I should say it stands ready to furnish—a new legal basis for international relations. In a recent debate in the House of Lords in England, the Lord Chancellor declared that it "has become, from its universal character as well as from the general nature of the obligations which it imposes, the background against which all the efforts to ensure peace are made."[2] The phrase which I have borrowed from the text of the treaty as the title of these lectures is the core of a stipulation which may come to stand out in the future, like phrases from Magna Carta and from the Constitution of the United States, as the fountain-head of conceptions which will in some degree dominate men's thought even when it fails to control their actions.

Assuming that a legal obligation is embodied in the second article of the Treaty of Paris, but without assuming that this obligation will never be violated, I shall ask you to accompany me into an exploration of the "pacific means" which are available in this year 1935 for the settlement or solution of disputes or conflicts between nations. Let us attempt to ascertain how far the Treaty of Paris has already been implemented by efforts of which the coming generation will be the legatee.

I venture to believe that no one in the United States, at any rate, will be disposed to question the need for a wider understanding of the precise nature of present-day methods of clearing away international differences. If I had been tempted to entertain any doubt as to the existence of this need, the temptation would have vanished

[2] *Parliamentary Debates,* House of Lords, February 20, 1935, vol. 95, p. 1048.

when a few weeks ago I sat in the gallery of the United States Senate and listened to the debate concerning the Permanent Court of International Justice. As I heard eminent American statesmen priding themselves on the agencies of pacific settlement which exist from before the War and belittling all the advances which have been made since the War, I was convinced that emphasis is needed on the "pacific means" by which sixty-three nations of the world have agreed to seek the settlement of their disputes "of whatever nature or of whatever origin they may be."

In spite of our recent progress, our generation has not moved wholly independently of the efforts of previous generations, and it is therefore necessary for us to begin our exploring, so to speak, among the ruins of nineteenth-century plans for the maintenance of peace.

I

THE LAW OF PACIFIC SETTLEMENT PRIOR TO 1914

THROUGHOUT the nineteenth century, despite the numerous rivalries and contests in which States were engaged, there was a steady development of the pacific means available for the settlement of international disputes. The seventeenth and eighteenth centuries had made little contribution in this direction,[1] but a certain impetus had been given to the development of arbitration by provisions in what we know as the "Jay Treaty" between the United States and Great Britain, concluded in 1794. The remarkable progress in the fields of communication and transportation which characterized the nineteenth century led both to changes in the methods of warfare and to a new emphasis on the relegation of war. A robust peace movement flourished in America and Western Europe about the middle of the century,[2] and the conspicuous success of the Alabama claims arbitration in 1872 led to some revival of its insistence in the later decades of the century.

More significant, however, was the nascent international organization, an era of which was ushered in by the new ease of communication. In 1865 a relatively large number of States organized what soon became the International Telegraphic Union, and in 1874 the Universal Postal Union took its shape from prior measures

[1] See 1 Moore, *International Adjudications* (modern series), p. x.
[2] See M. E. Curti, *The American Peace Crusade, 1850–1860* (1929).

for coöperation in handling postal communications. The later part of the nineteenth century made its greatest contribution to international law in the form of international organization and international legislation,[3] and this paved the way for a systematization of the law concerning the pacific settlement of disputes. Just at the close of the nineteenth century the time seemed to be ripe for fresh effort in this direction.

The Peace Conference which met at The Hague in 1899 may have failed to accomplish the principal purpose for which it was held, *viz.*, the limitation of armaments, but it made a significant contribution to the law of pacific settlement along two different lines. It codified the preëxisting law as to methods of dealing with disputes, and it systematized a procedure for the organization and conduct of international arbitration. The Convention for the Pacific Settlement of International Disputes of July 29, 1899, as it was amplified by the second Peace Conference at The Hague in 1907, still stands as a great charter of pacific settlement, and in the intervening period of more than thirty-five years, it has served as a convenient aid in many periods of international stress and strain. Forty-five States of the world are now parties either to the 1899 or to the 1907 convention—in practice the 1907 convention has superseded

[3] It is not generally appreciated that what is now known as international legislation is for the most part of very recent origin. Secretary Seward, replying in 1868 to an invitation to the United States to accede to the Geneva Red Cross Convention of 1864, stated: "It has always been deemed at least a questionable policy, if not unwise, for the United States to become a party to any instrument to which there are many other parties. Nothing but the most urgent necessity should lead to a departure from this rule." *U.S. Foreign Relations, 1868,* I, 456.

that of 1899, even for most of the States not parties to the later instrument.

The Hague Conventions contain, first of all, an intimation of an undertaking by the parties to have recourse, before an appeal to arms, to the good offices or mediation of one or more friendly States;[4] this is stipulated for, however, only "as far as circumstances allow," and the weasel phrase sucks all life out of the seeming obligation. Provision is made, also, for the offer of good offices or mediation by States not concerned in a dispute, and such an offer was described as the exercise of a right which can never be regarded "as an unfriendly act." For some reason,[5] the Seventh International Conference of American States, meeting at Montevideo in 1933, thought it necessary to reaffirm this principle.[6] In practice, the two processes of good offices and mediation easily coalesce, though a general distinction may be made between them. When a State offers good offices, it proposes to serve merely to facilitate negotiations conducted by the parties themselves; when it offers mediation, it proposes to assume charge of the conduct of the parties' negotiations and to be free to offer suggestions for the consideration of the parties. The numerous occasions on which such offers have been made, frequently with gratifying results, do not need enumeration. The United States has a very creditable record in this connection, but as I hope to show later the great develop-

[4] The language in the Hague Conventions follows very closely that of a protocol of the Conference of Paris of April 14, 1856. 15 Martens, *Nouveau recueil général de traités*, p. 767.

[5] Eighteen of the American republics are parties to one or the other of the Hague Conventions.

[6] *Final Act*, p. 85.

ment of mediation has resulted from the efforts of the Council of the League of Nations.

One of the chief subdivisions of the 1899 Hague Convention, greatly elaborated in the 1907 Convention, is devoted to international commissions of inquiry, but it is an indication of the limits on the orbit within which the Hague Conferences moved that this device for "elucidating the facts" was envisaged only for disputes "involving neither honor nor vital interests."[7] Great hopes were entertained for the usefulness of this device, especially after the successful inquiry into the Dogger Bank Affair in 1904, but, in view of the very limited use of such commissions in more than thirty years,[8] it is not possible to say that these hopes have been fulfilled. Yet one innovation in the field of peaceful settlement easily leads to another, and in these provisions of the Hague Conventions we may trace the origins of significant later developments, such as the Bryan treaties, the stipulations in postwar conciliation treaties, and some of the methods followed by the Council of the League of Nations.

The principal contribution of the Hague Conferences was made in the field of arbitration. The many instances of arbitration during the nineteenth century[9] had failed to produce a consistent body of arbitral law. *Ad hoc* tribunals had worked in isolated fashion, and they had

[7] The phrase "national honor and vital interests," which seems to have originated at the Peace Conference of 1899, was much used in arbitration treaties prior to 1914; but it has now become rare if not obsolete.

[8] Such commissions have been created in only three cases. See Hudson, *Permanent Court of International Justice* (1934), chap. 2.

[9] See Ralston, *International Arbitration from Athens to Locarno* (1929), pp. 345–355.

seldom attempted to evolve a cumulative case-law. Hence, different conceptions prevailed as to their functions, their procedure was not uniform, their activities were often hampered by uncertainty. It seems not too much to say that prior to 1899, arbitral law was only spasmodic and chaotic. The result was that difficulties had frequently been encountered, both in the organization of tribunals and in the reception of their awards.

The Hague Conferences stopped short of creating any obligation for States to submit their disputes to arbitration, and even in 1907 it proved impossible to do more than to recognize the principle of compulsory arbitration. Yet the Conferences did evolve a system of arbitration, for which a procedure was outlined, and permanent agencies were created to facilitate the process. Under the Conventions of 1899 and 1907, international arbitration has for its object "the settlement of disputes between States by judges of their own choice and on the basis of respect for law." Much has been made of this latter phrase in connection with a distinction sometimes drawn between arbitration and adjudication. A basis of respect for law may indeed be different from a basis of law, but the records of the 1899 Conference do not emphasize the distinction and the words of the convention should not be used to bolster a contention that arbitrators do not perform a judicial function. As it is usually conducted, arbitration is quite as much within the limits of law as adjudication, and the differences between the two processes are to be found chiefly in the constitutional instruments under which tribunals act. No ready-made, all-embracing body of international law is at hand to either kind of tribunal, and the judicial process al-

ways involves a finding of the law to be applied in the course of which both selective and creative elements are bound to appear.

It was "with the object of facilitating an immediate recourse to arbitration for international differences which it has not been possible to settle by diplomacy" that the first Peace Conference provided for the creation of the Permanent Court of Arbitration. This was an important advance toward international organization for the administration of justice, chiefly significant, perhaps, because it paved the way for the establishment of the Permanent Court of International Justice twenty years later. Looking back to 1899 after this interval of years, one may think that it was a small and feeble step that was taken. As an institution, the Permanent Court of Arbitration is a frail structure. It consists merely of a roster of "members," of whom four may be named by each of forty-five States, the number usually being about 150. These members have never met, and in the normal course of things they probably never will meet; but they are supposed to be available for accepting invitations to constitute any tribunal which disputing States may decide to set up. The one "permanent" feature of the institution is a Secretary-General, who with a small staff[10] constitutes the *Bureau* of the Court, functioning under the direction of an Administrative Council composed of diplomatic representatives at The Hague. The small expense of this organization is borne by the governments of States which are parties to one or the other of the Hague Conventions.

[10] The Secretary-General and the members of his staff have always been nationals of the Netherlands.

Slight changes were made in 1907 in the provisions for the Permanent Court of Arbitration, but as the 1907 convention has not wholly superseded that of 1899, the Court exists today under the two instruments. In practice, it seems to make little difference whether a State which is a party to the earlier is also a party to the later Convention; Great Britain and Italy have never ratified the 1907 Convention, yet both have been parties to arbitrations under it.

In thirty-five years, the Permanent Court of Arbitration has proved serviceable in a large number of disputes. It is not always easy to say that a particular arbitration has been conducted before a tribunal of the Court, for there is considerable variance in the extent to which the framework of the conventions is followed from time to time. Certain arbitrations for which the procedural provisions of the conventions are adopted are not listed among the cases in the Permanent Court of Arbitration; on the other hand, in some of the cases so listed the members of the tribunals are not recruited from the list of members of the Court.[11] In some of the cases, oral proceedings are held; in others, the proceedings are confined to written statements by the parties. In most cases, the tribunal meets at The Hague and use is made of the services of the Secretary-General; in some, however, meetings are held elsewhere than at The Hague, and no function is served by the Secretary-General.

The latest annual report[12] lists twenty-one *affaires*

[11] In this case, the tribunal is said to be a special tribunal.

[12] *Rapport du Conseil administratif de la Cour Permanente d'Arbitrage*, 34th year, p. 35.

d'arbitrage jugées by tribunals or special tribunals of the Permanent Court of Arbitration. These cases vary very much in importance, and few of them relate directly to situations in which the continuance of peace was endangered. Perhaps the case of the deserters from the French Foreign Legion at Casablanca, decided in 1909, can be put into that category; but many of the cases related to claims of money damages for injuries sustained by nationals of one of the parties, and hence bore upon the maintenance of peace only in so far as they removed sources of friction which might have festered. In a few cases, difficulties were encountered in the organization or functioning of the tribunals, but most of the arbitrations were entirely free of troubling incidents. In no case has a State refused to carry out or to abide by an award given. On the whole, it is a record which tends to beget confidence in the method of arbitration.

I think we have every reason to be grateful for the assistance which the United States has received from the Permanent Court of Arbitration in dealing with its international disputes. Our country has been one of the most frequent suitors before tribunals created out of the Court. The first tribunal created at The Hague was established in 1902 by the United States and Mexico, to deal with a dispute concerning the Pious Fund of the Californias. In 1910 the United States was a party to two arbitrations before such tribunals—in the North Atlantic Fisheries dispute with Great Britain and in the Orinoco Steamship case with Venezuela. Since the World War it has joined with Norway, the Netherlands, and Sweden, on three separate occasions, in setting up

tribunals to deal with disputes. The arbitrations with Norway and Sweden both involved the disposition of claims for money damages made against the United States; that with the Netherlands involved sovereignty over the Island of Palmas which was unsuccessfully claimed by the United States as a part of the Philippine archipelago. In each of these cases, the results have been not unsatisfactory, though in some of them the United States has been the losing party, and in one case, that with Norway in 1922, a large award against the United States was paid only under protest.

Little account was taken of the possibility of resorting to this agency for arbitration in the negotiations which preceded the World War, and when mention was made of the Court in 1914 it was only to sustain a jeer. Most people were impatient of the Hague tradition during the War, and while it had stout defenders at the Peace Conference in Paris in 1919 the temper of the time called for the launching of fresh effort along different lines from those which might have been taken at the projected third conference at The Hague. Yet when the Permanent Court of International Justice was being created in 1920, no hospitality was shown to a proposal of Argentine representatives to abolish the Permanent Court of Arbitration; instead, its continued existence was expressly envisaged, and its members were entrusted with the responsibility of nominating candidates for the elections of judges of the new Court. Nor was it clear at the time that States would not be disposed to create tribunals out of the Permanent Court of Arbitration in preference to submitting their cases to the Permanent Court of International Justice; in the former they could

choose their own judges, while in the latter they would be restricted to a fixed personnel. In fact, this has not happened. In thirteen years, while numerous cases have come before the new Court, only four arbitrations have been conducted within the framework of the Permanent Court of Arbitration, and in three of these four arbitrations one of the parties has been the United States of America which has suffered from a self-inflicted paralysis with reference to the Permanent Court of International Justice.

The heyday of the Permanent Court of Arbitration may be thought to have passed. Yet it has served, and it continues to serve, a useful purpose as a "pacific means" of dealing with international disputes. The number of treaties now in force which provide in some way for a utilization of the agencies created by the Hague Conventions is probably considerable, and such treaties are still being entered into. This fact, and the method of nominating candidates for judgeships in the Permanent Court of International Justice, would seem to assure the future of the Permanent Court of Arbitration.

On the other hand, it may be pointed out that popular thinking about the Permanent Court of Arbitration is often uninformed. The name itself tends to create an impression which the facts do not warrant. This has been very noticeable on the part of certain people in the United States who have urged the adequacy of this Court for the needs of the present-day international community. Even in formal international agreements, also, illusory provisions are sometimes included for the reference of disputes to the Permanent Court of Arbitration. A recent example is to be found in the declara-

tions made on June 2, 1934, by France and Germany, in connection with the execution of Articles in the Treaty of Versailles relating to the Saar; each of these States agreed that certain differences between itself and any Member of the Council might "be brought before the Permanent Court of Arbitration in accordance with the provisions" of the Hague Convention of 1907, "in order that a decision may be taken by that Court."[13] To the casual reader, this would appear to be an effective provision for obligatory arbitration. When it is analyzed, however, it is seen to give a wholly false impression. The two States concerned would have to agree upon a statement of the question to be arbitrated and upon the composition of the tribunal to which it would be referred. An obligation to arbitrate which leaves such matters open to later disaccord may serve some useful purpose, but it cannot be regarded as an effective provision for definitive or obligatory settlement.

The discussions at the Hague Conferences and the conventions in which they resulted encouraged fresh activity in the conclusion of general arbitration treaties. Few such treaties had been in force in 1899. In 1902 Spain led the way in a new development, concluding in a single year arbitration treaties with seven Latin-American States. In 1903 the formula employed in these Spanish treaties was amplified in a treaty between France and Great Britain, and the new formula was copied very widely. Between 1902 and 1914 more than 120 treaties were entered into, all of them inspired by the Hague Conventions and related in some way to their

[13] *League of Nations Official Journal, 1934*, pp. 651, 652.

provisions. I shall later indicate that the obligations contained in these treaties were slight. Elastic terms were employed in the statements as to the disputes to which they applied, and the necessity of reaching accord on the exact statement of the question to be arbitrated and on the composition and procedure of an *ad hoc* tribunal to conduct the arbitration reduced the treaties to mere agreements to agree to arbitrate. Moreover, the treaties may have had some positively harmful results in creating a false sense of security. Let me now dwell on their importance in focusing attention on a theretofore neglected need, and in paving the way for a more promising extension during these latter years. I have little doubt that this by-product of the work of the Hague Conferences has facilitated the recent progress which I shall trace in a later lecture.

The Hague Conventions continue to serve a useful purpose, also, as a codification of the law of arbitral procedure. The conduct of many arbitrations which are in no way related to the Permanent Court of Arbitration is influenced by their procedural provisions, which on the whole have stood the test of time. Yet one cannot say that all of the recent arbitrations have followed a smooth course. In some of the claims tribunals created by Mexico and other States embarrassing difficulties have arisen; it is to be regretted that friction has been especially noticeable in the United States–Mexican Commissions. Difficulties have arisen also in the German-American Mixed Commission. Despite the provisions of the Hague Conventions, there are still many lacunae in arbitral law and procedure, and one of the needs of international law at present is that they should

be filled. Perhaps a time will come when even a revision of the Hague Conventions may be contemplated. Certainly arbitration as a process will go on, aside from the functioning of the Permanent Court of International Justice, and as one of the principal "means" by which pacific settlement is to be sought it needs to be perfected as much as possible.

Let me summarize this review of the "pacific means" which have come down to us from the period before 1914. Of course, States are always free to seek a settlement of any controversy by direct negotiations between themselves.[14] When direct negotiations fail to yield agreement, resort may be had to the good offices of a friendly State for their continuance, or a friendly State acting as mediator may aid the parties in seeking a solution. If an *impasse* is reached in the efforts of the parties themselves, arbitration by an impartial tribunal, acting "on the basis of respect for law," is available as a means of settlement, and it is greatly facilitated by the Hague Conventions for Pacific Settlement. The Permanent Court of Arbitration has proved itself a useful scaffold for the creating of impartial tribunals, and it may continue to offer in some cases the aid which dis-

[14] I am indebted to Mr. G. Antonius, of Jerusalem, for an example of pacific settlement which might have attracted wide attention. It related to a dispute originating in 1931 between the Imam of Yemen and His Majesty Ibn Saud concerning the territory of Jabal 'Aru. The two Governments having agreed upon the desirability of arbitration and being unwilling to call in arbitrators from elsewhere, the Imam of Yemen proposed that Ibn Saud should serve as arbitrator, though Ibn Saud was one of the parties to the dispute. Ibn Saud accepted the mandate on condition that the Imam would abide by the result. At the conclusion of his consideration of the matter, Ibn Saud was convinced that historically and legally the claim of the Imam of Yemen was superior to his own, and he gave an award to this effect.

putant States will need. Even apart from post-war agencies, and independently of the recent commitments which have broken with the lame traditions of the pre-war years, "pacific means" are at hand to give substance to the obligation in the Treaty for the Renunciation of War. Yet efforts of the last fifteen years have greatly changed the face of this picture, and as I proceed to review them I think it will be clear that we live today in a wholly different era from that which preceded the holocaust of 1914.

The first Peace Conference at The Hague in 1899 adjourned without having made definite provision for a continuation of its efforts, though it did envisage a subsequent conference to be held in the near future. The immediately following years had their discouragements, particularly in the fact of the South African War, yet in various quarters public opinion soon rallied to the support of continuous efforts along the lines forged at The Hague. It is not without interest for us today that the General Court of this Commonwealth of Massachusetts took a part in this movement; on February 19 and 25, 1903, the two Houses of our state legislature voted unanimously to memorialize Congress to authorize the President "to invite the Governments of the world to join in establishing . . . a regular international congress to meet at stated periods to deliberate upon the various questions of common interest to the nations."[15] In the following year, a more active initiative was launched by the Interparliamentary Union at its meeting at the Louisiana Purchase Exposition in St. Louis, and its in-

[15] *Acts and Resolves Passed by the General Court of Massachusetts, 1903,* p. 587.

sistence moved President Roosevelt on October 21, 1904, to propose a second Peace Conference at The Hague. Yet such was the state of international organization at that period that almost three years elapsed before this proposal was realized.

When the second Peace Conference adjourned on October 18, 1907, it definitely recommended a third Peace Conference to be "held within a period corresponding to that which has elapsed since the preceding Conference," *i.e.*, within eight years. It went further, also, in suggesting that preparation be made for the work of a future conference, and in some countries this suggestion was acted upon. Even before clouds of war began to appear in 1914, however, it was clear that a third Peace Conference at The Hague could not be held in 1915. Preparations were not sufficiently advanced, and the habit of conference had not yet been formed. On June 22, 1914, the Government of the United States had proposed the postponement of the conference to 1916.[16] Long before that date, however, the furies had been unleashed.

The magnificent Peace Palace at The Hague in which the Permanent Court of Arbitration has its seat, had not been open for a year when the clouds of 1914 began to rain their havoc upon a distraught Europe, caught unaware. The Hague tradition proved too fragile to prevent the storm, and as the world marched on toward Armageddon its gaze turned away from the Peace Conferences of 1899 and 1907. A sacrifice of ten million lives created a necessity for a new beginning, and for a

[16] *U.S. Foreign Relations, 1914,* p. 10.

time after 1918, a stricken, subdued, and exhausted world seemed willing to abandon the dogmas of nationalism for the ideal of a world order.

II

PACIFIC SETTLEMENT THROUGH THE LEAGUE OF NATIONS

THE Covenant of the League of Nations stands out as the highwater mark in the history of efforts to provide for the pacific settlement of international disputes. It was promulgated at a very exceptional moment of history. A war-weary world sought eagerly for some escape from the old order of international affairs, and the grouping of the forces of control was for a short period such that a definite break could be made with the past. Certainly at no time before 1919, and possibly at no time since, could such a large measure of agreement have been reached on the objectives to be pursued and on the methods of pursuing them. I feel quite confident that if the question of adopting a constitution of the United States were now presented to the forty-eight States of this Union, there would be little chance of our reaching agreement upon an instrument as satisfactory as that which has been handed down to us from 1787. I am equally confident that if the question of adopting a covenant were now presented to the fifty-nine States of the world which are at this moment members of the League of Nations,[1] there would be little chance of their reaching agreement upon an instrument as satisfactory as that which was adopted in 1919. History is not a

[1] Not counting Japan, which will cease to be a member on March 27 of this year, but counting Germany and Paraguay, which have also given notice of an intention to withdraw from membership.

strait jacket, but its forces operate as compulsions of which each generation may claim the advantages while it endures the disadvantages.

In a sense, therefore, the end of the World War presented an auspicious occasion for pushing forward the preparations of the world for the maintenance of peace. Yet, as is usually the case in human affairs, the time was also beset with inauspicious factors which greatly increased the difficulties of progress in that direction. The legacies of the War, the egregious errors of the treaties of peace in which the Covenant of the League of Nations had to be embodied, the uncertainties of the new maps of Europe, of Africa and of Asia, and, above all, the psychology in which fresh effort was launched made it one of the most unpromising moments in history for laying firm foundations of the world's peace. Only now that the grip of the War has come to be loosened can we begin to realize the tremendous handicaps with which the League of Nations was born.

The realization takes the form, with some people, of a sigh for a world which has never had a World War and which is therefore free of the fetters which it left; with others, of attempted resignation from all responsibility for any but their own particular part of the world, which they would wish to insulate from all "foreign" influences. I do not need to dwell upon the futility of these attitudes. Neither of them will produce any progress in our time. Somehow we must face the problems which the folly of a previous generation has handed on to us, and I think it is being realized by an increasing number of the people who have reached this determination that

the League of Nations offers the most hopeful agencies through which their solution is to be found.

The strength of the Covenant consists primarily in the viability of the institutions which it creates. Unlike the Hague Conventions, it is not confined to an outline of methods to be followed by the parties to a dispute in adopting *ad hoc* measures for seeking a settlement. Unlike the Briand-Kellogg Pact, it does not stop with a declaration of purpose and the formulation of a general obligation to effectuate that purpose. Institutions have a great way of clustering loyalties around themselves, and I am so confident of their usefulness over a long period of time that I am more interested in keeping alive the Assembly and the Council of the League of Nations than in the success of these agencies in dealing with the particular problems which are now coming before them.

The Assembly bears some resemblance to the series of conferences at The Hague before the War, and it is only necessary for one to recall the difficulties which were encountered in the efforts to establish that series to appreciate what it means for me to be able to say that in fifteen years the Assembly has held eighteen sessions. It is the nineteenth session of the Assembly for which preparations are now under way, to open on the second Monday of next September. The Council of the League of Nations had no prototype in the pre-war days; since its work was inaugurated in January, 1920, it has held eighty-four sessions, and arrangements are now made for the eighty-fifth session to be held in the course of a few weeks. This newly inculcated habit of conference reinforces the Covenant's provisions for dealing with

international disputes, to give them a significance which other plans have lacked.

Before we proceed to an analysis of the Covenant's provisions, mention must also be made of the dual nature of the aims of the League of Nations. Two main purposes are stated in the opening words of the Covenant, "to promote international coöperation and to achieve international peace and security." I think you will agree that these purposes are mutually interdependent. The substantial accomplishments of these past fifteen years in promoting international coöperation serve today to broaden the basis of international peace. Any attempt to achieve peace and security which is not accompanied by an ever-widening of coöperative effort would be truncated even though it were successful. This duality of function, then, is a further reinforcement of the system of pacific settlement which in the popular mind must always be the chief feature of the League of Nations.

The emphasis of the Covenant is less on the settlement of disputes than on the maintenance of peace. The primary function of the League of Nations is not the solution of differences between States but the prevention of war, and I think the "heart of the Covenant" is to be found, not in Article 10 as President Wilson suggested, but in Article 11. There the principle is laid down—and in my judgment it is the most pregnant principle enunciated by our generation—that a war anywhere is a matter of concern to people everywhere. The exact words are that "any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the

whole League." One does not need to be steeped in the Grotian tradition and versed in international law to realize that this declaration presents a *volte face* to three centuries of thinking about international relations. Since the eighteenth century, at any rate, we had proceeded on the premise that if two peoples went to war it was their own affair, and that other peoples were not to judge of their actions. Didn't President Wilson exhort the people of the United States in August, 1914, to be "impartial in thought as well as in action"? It followed, therefore, that on the outbreak of a war between two nations—the word "outbreak" is a literal description of what happened in those years—other peoples were presented with two alternatives. They could either decide to enter the war on one or the other side, for reasons of which they alone were to judge, or they could remain neutral. The eighteenth-century premise thus became the basis of a system of law concerning the rights and duties of neutrals. The Covenant offers a challenge both to the premise and to the system of law which has grown from it. A new conception of the world's peace which nations may not violate with impunity is held aloft as the aspiration, if not the achievement, of our post-war approach to international relations.

I think this explains why in the system of the Covenant more attention is given to the proscription of war[2] than to the settlement of disputes. The system is embodied in Articles 11 to 17, but certain of these articles

[2] The question of what is "war," as the term is used in the Covenant, is now agitating many minds, but a discussion of it seems to have no place in these semi-popular lectures. I am dealing here with "pacific means," and I assume that all employment of force is excluded by this phrase.

may be quickly disposed of. Article 13 tends to give the false impression that it adumbrates the compulsory arbitration of disputes "which cannot be satisfactorily settled by diplomacy," but its obligation is limited to those disputes which the parties "recognize to be suitable for submission to arbitration or judicial settlement."[3] It does declare that certain disputes are "among those which are generally suitable for submission to arbitration or judicial settlement." The enumeration is an elaboration of a declaration made by the Hague Peace Conference of 1907; and the fact that the enumeration in Article 13 was later copied in Article 36 of the Statute of the Permanent Court of International Justice, under which forty-two States have now conferred obligatory jurisdiction on the Court, shows the conservatism with which the Covenant was drafted. Once there has been a resort to arbitration or judicial settlement, Article 13 proscribes war against any State which abides by the result. Article 14 foreshadows the creation of an international court, which to this extent was to be a part of the system of the Covenant. Article 16 deals with the possibility of a State's "resort to war in disregard of its covenants"; it constitutes that part of the Covenant which reflects the ideas of a so-called "League to Enforce Peace" organized in the United States during the War, and which embodies the much-discussed sanctions of the League. Article 17 provides for an extension of

[3] The words "or judicial settlement" were added in several places in the Covenant by amendments which became effective in 1924, but it was not the purpose of these amendments to emphasize a distinction between the two processes of arbitration and adjudication.

The present English version of the Covenant is reproduced in the Appendix, p. 119, *infra*.

the system to States not members of the League, with their own consent. I shall invite your attention first to Articles 12 and 15, which set forth the principal obligations of pacific settlement, and then to Article 11, which constitutes the most important mandate of the Council and the Assembly.

By Article 12 of the Covenant, fifty-nine members of the League have agreed that "if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or judicial settlement or to enquiry [Fr., *à l'examen*] by the Council." This undertaking was a big advance in 1919, though it may be considered somewhat less so today. It stresses the purpose of the framers of the Covenant to proscribe war, but it creates a rather illogical situation. If a dispute is "likely to lead to a rupture" between the States involved, its obligatory submission for settlement or inquiry is provided for in the Covenant; but if the dispute is not "likely to lead to a rupture," though it may be dealt with by the Council under Article 11, the Covenant imposes no obligation on a Member to submit it to be dealt with in any way. One might say, therefore, that the less serious the dispute, the less onerous is the obligation imposed by the Covenant. In this respect, the Covenant reversed ideas which were current in the Hague Conferences. Of course it is impossible to lay down any criteria for determining which disputes are "likely to lead to a rupture," and any vagueness in the phrase should not be turned toward diminishing the obligation. If the qualification prevents the provision in Article 12 from stating an "all-in" obligation of pacific settlement, it is nevertheless probably broad enough to

cover any dispute for which, in violation of its obligation under Article 2 of the Treaty for the Renunciation of War, a State might seek settlement by other than pacific means.

The further provision in Article 12 does not go so far as Article 1 of the Treaty of Paris. The Members of the League "agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision, or the report by the Council." This so-called "gap in the Covenant" may be said to have been due to the timidity of the framers of that instrument. They showed great courage in some of their innovations, but they moved within the limits of a very modest desire to proscribe only wars begun without a previous exhaustion of the pacific means made available. In Article 13 they were bolder, for the proscription there applies to any war against a member of the League which has complied with an award or judicial decision on a dispute submitted to arbitration or judicial settlement.

Article 15 of the Covenant buttresses the provisions in Article 12, and to some extent it fills in the "gaps." Here it is an obligation of both of the disputing States to submit to the Council "any dispute likely to lead to a rupture, which is not submitted to arbitration or judicial settlement." It is the duty of the Council, then, to "endeavor to effect a settlement of the dispute," and no limit is placed on the methods by which this endeavor is to be made. The methods employed in numerous cases which have arisen have been various. More often than not, the Council lends its offices to a continuance of negotiations between the parties themselves, and in no case has it opposed the continued efforts of the parties

to reach a direct solution. On many occasions the Council has availed itself of assistance by *ad hoc* committees of jurists, or by commissions of inquiry on the spot. It is only when all possible avenues of settlement have been explored without success that the Council can proceed to the performance of its second duty, to "make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto." Before the time for such a report arrives, the dispute may be referred to the Assembly, either on the initiative of the Council or on a timely request by one of the parties. After a report is voted by the Council unanimously (not counting the votes of the parties) or is agreed to in the Assembly by all of the States represented on the Council and a majority of the other members, the proscription of war becomes absolute to the extent that a Member of the League is bound not to go to war against a party to the dispute which complies with the recommendations of the report; if such a report should prove to be impossible, "the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice," which is another way of saying that they revert to their old freedom to make war as and when they please. The report itself never becomes binding upon the parties, whether unanimous or not; it exists only as a barrier to hostilities even when there is the necessary unanimity.

The system of the Covenant, as it rests on Articles 12 and 15, is one of formal obligations assumed by the Members of the League, designed to assure that they will in no case resort to war without first availing them-

selves of every possible opportunity for reconciliation to be found inside or outside the League of Nations. The capsheaf of the system to be found in Article 11 is not so restricted.[4] Here the emphasis is on the general world interest in peace. The first paragraph of Article 11 stresses not the formal obligations of the parties, but the general responsibilities of the Council for the maintenance of peace. Any war or threat of war being "a matter of concern to the whole League," the League, *i.e.*, the Assembly and the Council, has the duty to "take any action that may be deemed wise and effectual to safeguard the peace of nations." It is a large responsibility and a wide competence. It gives the principal organs of the League a general commission to work by any means which they approve for the restoration or maintenance of peace, if there is a war or a threat of war. They do not need to await an appeal by one of the warring or disputing States to be invested with jurisdiction; it is made their duty to take cognizance of threatening situations of their own motion, and at least to deliberate upon the situation and to decide whether any "wise and effectual" action could be taken. For this purpose a meeting of the Council must be summoned by the Secretary-General upon the request of any Member of the League whenever "any such emergency" may arise.

Under a second paragraph of Article 11, the Assembly and Council are given an even larger competence to consider "any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon

[4] See the suggestive memorandum by M. Rutgers (Netherlands), in *League of Nations Official Journal, 1928,* pp. 670–686.

which peace depends." The paragraph is not phrased as an enabling provision with reference to the Assembly and the Council, though that is clearly its effect; it is phrased as a declaration of "the friendly right of each Member of the League to bring" such a circumstance "to the attention" of these bodies. Here, there is no statement of duty. Either body may decide that the "circumstance" does not call for any consideration, and if it decides to the contrary it is entirely free to make its own appreciation of the "circumstance" brought to its attention. If it finds a threat to disturb international peace or international understanding, it will have the power if not the duty to "take any action which may be deemed wise and effectual" to prevent such a disturbance.

When it takes action under Article 11, the Council does not have to confine itself within the limitations of law. It does not exercise a judicial, or even a quasi-judicial function; it may or may not stage a formal hearing of the specially interested States, though of course such States will be entitled to be represented and will therefore have opportunities to present their views. Nor is the function a legislative one, and it is not a question of issuing any binding fiat. The rôle of the Council under Article 11 is usually described as "conciliation," and the description is justified by most of the practice to date. Even that term is not apt, however, for the possible action is not limited to securing agreement between the parties. The Council's mandate is to protect the general interest, to safeguard the world's peace. Its decisions will lie in the political field, and they are limited only by the restraints of political wisdom. The very

composition of the Council is designed to give them weight. Yet having no army at its command, the Council will be powerless except as it secures the coöperation of various governments, and conceivably it may enlist the coöperation of the governments of States not members of the League. As each State remains free to give or withhold such coöperation, and as the Covenant has been interpreted to require unanimity for the application of Article 11, the Council may easily be crippled in its efforts.

Let me now attempt to restate the fundamental features of this "collective system" for the preservation of peace, aside from the numbers of the articles of the Covenant which I cannot ask you to remember. First of all, its face is set against war, but it does not constitute a blanket condemnation of war and it conservatively refrains from closing all the doors to the opening of hostilities. Its reliance, for the most part, is placed on public opinion, informed and fortified by the elucidation of facts and by the baring of motives behind national policies. Second, without creating an obligation to seek an orderly settlement of every dispute, it stresses arbitration and judicial settlement by agencies chosen by the parties; and, once they have been resorted to, it lays down an imperative duty to abide by the results of such a settlement, the door being completely closed to hostilities against a State which lives up to this duty. Third, the system is chiefly concerned with disputes which may lead to a rupture between the States involved, and it imposes a categorical duty on these States to submit such disputes to arbitration or judicial settlement or inquiry. This duty is specific, not general. It is

not left in the air. It is tied to institutions which are at hand, human but viable. If another forum is not sought, submission to the Council is made mandatory, and while it cannot render a binding decision, the Council's report if adopted with a measure of unanimity is erected as an absolute barrier to a legitimate resort to force. In any event, there is the obligation on Members of the League to refrain from going to war until three months after the exhaustion of orderly processes of settlement. Finally, there is a general mandate given to the Council, as a political body composed of politicians, to organize all possible coöperation to safeguard the world's peace. If apart from the specified sanctions States remain free to make their own appreciation of any situation and even to withhold their coöperation in certain ways, the Council is bound nevertheless to deliberate and to act as wisdom may dictate. It exists as the guardian of the common interest of all peoples in maintaining peace throughout the world.

This, then, in outline, is the system of the Covenant, the collective system, for the pacific settlement of international disputes.[5] Its departure from all the plans discussed prior to 1914 will at once strike you. Its innovations were so bold, they ran so counter to pre-war thought, and they are susceptible of such wide development in the future, that I am sure you will share my wonderment, as we now gaze back to 1919, that it proved possible for them to be launched. Nor can I quite realize how it is that in so short a period as these

[5] Consideration of the Permanent Court of International Justice as one of the agencies of this system is postponed for a later lecture. See *infra*, III.

intervening fifteen years, so many of the peoples of the world should have come to accept, in profession at least, innovations of such far-reaching significance. What is not strange is that in this interval there has been hesitance in some quarters to accept them, that their wisdom has frequently been challenged, and that at times their authority even has been defied. The proscription of war on such a scale as that attempted in the Covenant was such a big step that it was bound to encounter resistance when the first ardors had cooled. That was to be expected, and as we proceed to examine some of the workings of the system in practice, I hope it will be clear to you that we need not abandon all hope because it has not been one hundred per cent successful.

Before proceeding to the practice, however, let me mention that I have not attempted to outline all of the activities of the League of Nations directed toward providing in advance the "pacific means" for settling international disputes. Its creation of the Permanent Court of International Justice I have intentionally postponed until we can deal with that subject separately. Nor have I referred to the special machinery created for dealing with disputes relating to transit and communications questions, a field in which there have been some notable successes. In 1932 the Council established a group of experts, with a fixed membership, for the friendly settlement of economic disputes, but no use has been made of this agency. Both the Assembly and the Council, also, have exerted a wide influence on the improvement of agencies of pacific settlement outside the orbit of the collective system; a resolution on the procedure of conciliation adopted by the Assembly in 1922 led to the

conclusion of a large number of treaties, and in 1928 a codification of provisions for conciliation, arbitration and adjudication was made in a General Act. Of these I propose to speak later.

In the time now remaining, I cannot hope to place before you a review of the complete record of the Council and Assembly in the sixty or more disputes with which they have dealt. Each of the disputes would require, for an adequate appraisal of the work of these bodies, more time than I can devote to this whole survey. It may be possible, however, for us to glance briefly at some phases of the record and to form a general judgment of the usefulness of the collective system. I shall pass very hurriedly over some of the successes, though they are less widely known than some of the failures, and we shall then attempt to inquire into the extent to which the failures were due to defects in the system itself. As most of the disputes have come before the Council rather than the Assembly,[6] our inquiry will deal chiefly with the rôle of the Council as an agency of pacific settlement.

In the early days, when the Council was cutting its teeth, it was frequently called upon to deal with territorial adjustments on the then uncertain map of Europe. In most cases, it succeeded in reaching some solution, and in the prevailing state of affairs even a bad solution was sometimes preferable to none at all. In some cases, the solution attained has lived into a state of permanence and satisfaction, even though at the time it was roundly denounced in some part of the world. The disposition of the Aaland Islands represented a great

[6] Only two disputes have been referred by the Council to the Assembly, the Manchurian dispute and the Chaco dispute.

triumph for the Council; the frontier which it recommended between Germany and Poland in Upper Silesia has proved to be more livable than most people predicted at the time; its assistance in the demarcation of the Albanian frontiers, useful at the time, has not altogether prevailed over subsequent changes desired by the interested States; its long and tedious worry over the question of Vilna led to no issue when local events had triumphed, and its handling of that dispute between Lithuania and Poland may be classed as a failure.

A very instructive case arose between Czechoslovakia and Poland in 1924, over what is known as the Jaworzina boundary. It was clearly a situation in which an excited public opinion in each country made it impossible for that country's representatives to yield the points necessary to an agreement. The Council had the assistance of an advisory opinion of the Permanent Court of International Justice on some of the legal issues involved, and with this backing its recommendations possessed an authority which led to their prompt acceptance by both parties. In a difficulty which arose between Bulgaria and Greece in 1925, troops which faced each other on the two sides of the boundary were on the point of a clash when the Bulgarian general staff issued an order to the Bulgarian troops: "Make only slight resistance, protect the fugitive and panic-stricken population, prevent the spread of panic in the Struma Valley, and do not expose the troops to unnecessary losses, in view of the fact that the incident has been laid before the Council of the League of Nations, which is expected to stop the invasion."[7] Two days later

[7] *League of Nations Official Journal, 1926,* p. 202.

its order read: "Should the Greeks attack, our troops will abstain from all resistance." Prompt and energetic action by the Council led to a restoration of calm on that frontier.

The boundary between Iraq and Turkey in the region of Mosul gave great difficulty in 1924 and 1925, and at various periods Great Britain, as mandatory for Iraq, and Turkey seemed to be on the point of blows. Under a separate treaty, the Council had been invested with power to take a final decision on this frontier. After attempting through protracted negotiations to secure the *status quo* pending its decision, it dispatched a commission of inquiry to the region in dispute; but when it came to consider the report of this commission, serious legal questions were raised by the Turkish representatives as to the Council's powers and as to the extent of the unanimity required in their exercise. Again an advisory opinion had to be sought from the World Court. When the Council later proceeded to give its decision, loud protests were made in some quarters, and there were the usual predictions that the Council had dug its own grave. Quite quietly, however, a treaty was negotiated which within a few months had caused the Mosul question to pass into a history which ceased to stir popular interest. I dwell upon this case because it was only one of many in which at the time the Council was forced to act the sky was covered with dark clouds; in which long months were consumed in negotiations over tedious details; in which various agencies, some of them created *ad hoc*, were employed by the Council; in which its final action was stoutly opposed by men who said it could never be accepted; in which the Council's action led to

a successful solution in the end; and in which the public opinion which had been aroused soon forgot that such an issue had ever existed.

In some other disputes, the record is less satisfactory. The Corfu incident between Greece and Italy, in 1923, though it proved to be a flash in the pan, served as an unpleasant reminder of the pre-war tendency of great States to make the right with their own might. If the handling of that case offered little vindication of the collective approach to international difficulties, it demonstrated, nevertheless, the effect of a world opinion organized to disapprove the older practices of States. For a long period of years, a dispute concerning the Hungarian optants in Rumania dragged out before the Council, and beyond the furnishing of a forum for disputation little approach had been made to a settlement when the dispute was swallowed up in a dealing with larger and more general issues. Numerous questions growing out of the post-war settlements have continually engaged the Council's attention, to the solution of which it has been able to offer only indeterminate contributions. Yet the Council's methods can be better studied in two more recent cases which have now for several years engrossed public opinion.

In September, 1931, darts of lightning in Manchuria were promptly notified at Geneva by representatives of China, and for a greater part of two years the "storm over Asia" claimed most of the time of the Council. China's first appeal was made under Article 11 of the Covenant, and for several months earnest efforts were made to prevent any aggravation of the situation, to bring hostilities to an end, and to secure a restoration of

the *status quo ante*. The United States participated, at times halfheartedly, in these efforts. The seriousness of the situation was not fully appreciated, one of the difficulties being that on both sides the governments which had to be dealt with were not in full control of their own national forces. The Japanese representatives began with assurances that Japan had "no territorial designs in Manchuria." When the test came on a seemingly innocuous resolution which called for withdrawal of troops and direct negotiations, the necessary unanimity was not obtained because of the negative vote of the Japanese representative. In spite of the Council's efforts military operations in Manchuria were extended, and a futile clash was staged at Shanghai. Though it aided in the negotiation of armistices, the Council failed to halt hostilities, and it soon abandoned the effort to restore the *status quo ante*.

A second phase of the Council's effort was devoted to obtaining the fullest possible information. Use was made of the consuls of neutral States at Shanghai, organized as a consular commission, but the chief agency employed was the so-called Lytton Commission sent to investigate "on the spot." The recruiting and organization of such a commission was a gigantic task, requiring a great deal of time, and it did not arrive in the Far East until the end of February, 1932. Its work was well done, and many people who had expected its report to be mere whitewash were happily disappointed. The unanimous report of the Commission in September, 1932, was an admirable document, objective, impartial, informing, and conclusive. Japan countered by organizing in Manchuria the so-called Government of Manchukuo.

Meanwhile, China's appeal had been broadened to rest upon Articles 12 and 15 of the Covenant, and at its request the matter had been transferred from the Council to the Assembly, which met in special session, first on March 3, 1932, and then intermittently over a period of one year. The Special Assembly created a committee on which nineteen States were represented to follow events and to pursue every promising avenue of negotiations. Not until February 14, 1933, did this committee give up hope of success in its efforts at conciliation. To this committee fell the task of drafting a report, under Article 15 of the Covenant. On February 17, 1932, the draft report was broadcast throughout the world. As adopted by the Special Assembly on February 24, 1932, this report is one of the great state documents of all time.[8] It accepted the Lytton Commission's statement of the facts, it assessed responsibility for military measures which could not be "regarded as measures of self defence," it denied that the creation of "Manchukuo" was due to a "spontaneous and genuine independence movement," and it made definite recommendations as to the policy which should be pursued by China and Japan. The Special Assembly then set up an advisory committee to follow the situation. China accepted the Assembly's recommendations, but Japan refused to accept them and followed up the refusal with an announcement of intention to withdraw from the League of Nations. That withdrawal becomes effective on March 27 of this year. Meanwhile, Manchukuo continues to assert itself as the stepchild of Japan, though it has been

[8] See Hudson, *The Verdict of the League—China and Japan in Manchuria* (1933).

recognized by only one other State, El Salvador. Its future lies still in the laps of the gods.

What then are we to say of the collective system in this case? Not that it has not functioned. For seventeen long and weary months, discussions, negotiations, endeavors at settlement and conciliation proceeded through agencies of the League of Nations, and be it to the credit of China and Japan that they sat through. Never before in human history had any comparable effort been made on behalf of peace. Never before in human history had world opinion been so thoroughly informed or so widely mobilized on behalf of law and order. And yet one has to say that the system has failed to produce the desired result, and in consequence faith everywhere in the efficacy of effort has been shaken. I shall not ask you to assess any blame. The Japanese people may have acted only as any other people would have acted, in resenting outside interference from a distant city in Europe. And you may be able to conclude that all of the blame does not lie at the door of either China or Japan. I ask, merely, who of us would prefer that this effort, this expenditure of time and patience and money, had never been made?

Let me now deal briefly with the Chaco dispute between Bolivia and Paraguay. Here the issues are very different. No powerful industrialized nation is directly involved, no hegemony of a continent is at stake, but a long-standing dispute over a territorial question has for many months been the cause of one of the most frightful wars of history. Agency after agency has vainly attempted to reconcile the parties, both of whom have been loud in their professions of desire for a pacific set-

tlement. For two and one-half years, the matter has been before the League of Nations, though Article 11 of the Covenant was not invoked until two years ago. An able committee of three, set up by the Council, has devoted almost continuous attention to the dispute since September, 1932. Throughout the early months of 1933, the discussions were centered at Geneva in an attempt to find a formula for arbitration or judicial settlement. In May, 1933, it was decided to send a commission to investigate on the spot, and very competent personnel was soon found to constitute such a commission. Just as it was about to start, however, Bolivia and Paraguay requested the Council to confer a new fruitless mandate on their neighbors, Argentina, Brazil, Chile, and Peru. Not until November, 1933, did the del Vayo Commission arrive in South America. For a time its efforts seemed promising. With the coöperation of the Montevideo Conference, it even succeeded in arranging a truce of short duration. On May 9, 1934, it made an excellent report at Geneva.

In May, 1934, Article 15 of the Covenant was formally invoked by Bolivia, and then the dispute was transferred to the Assembly. The Committee of Three succeeded, after too many months of insistence, in organizing an embargo on shipments of arms and munitions to Bolivia or Paraguay, in which some thirty nations participated. So many legal questions were raised[9] that the Special Assembly did not adopt its report under Article 15 of the Covenant until November 24, 1934.

[9] A formal decision was taken that the application of Article 15 is not excluded where a rupture is no longer threatened but has actually taken place.

Time limits set for acceptance of the Assembly's recommendations by the parties had to be extended. They were promptly accepted by Bolivia, but Paraguay continued to demur. The three months' limit set by Article 12 of the Covenant expired on February 24, 1935, and on the eve of that expiration, Paraguay announced its intention to withdraw from the League. An advisory committee set up by the Assembly still has the matter in its charge; it has already recommended that the arms embargo against Bolivia be lifted, and such action has been taken by certain nations.

Meanwhile, a war continues in the Chaco under conditions which are revolting to every humanitarian sentiment.[10] Again, the collective system has functioned, but without producing the desired result. In view of the difference in the two political situations, the record here is even more discouraging than that in the Manchurian affair.

Now let me turn to a brighter page in the book of the League's history. In 1932 a threatening dispute arose between Colombia and Peru following the seizure by Peruvians of a remote Colombian hamlet on the Amazon, called Leticia. For weeks the headlines served at our breakfast tables resounded with the cheers of marching troops. Mediation by Brazil proved unsuccessful, and a rupture of diplomatic relations between Colombia and

[10] On June 12, 1935, a protocol was signed at Buenos Aires under which a truce has been arranged. Under the auspices of a Peace Conference composed also of neutrals, direct negotiations are now in progress between Bolivia and Paraguay (July 15, 1935), and these States have agreed to arbitration before the Permanent Court of International Justice in the event of a failure of the negotiations. League of Nations Document, C. 270. M. 137. 1935. VII.

Peru soon followed. Early in 1933 the matter was brought before the Council of the League of Nations. At first Peru said the Council had no authority in a dispute between two American States. This view was not taken by the Council, nor by the United States which supported the Council's efforts. Conciliation proved to be impossible. On March 18, 1933, the Council adopted a report under Article 15 of the Covenant,[11] and again it set up an advisory committee to take charge of the matter. On May 24, 1933, the two parties accepted the Council's recommendations, and agreed to enter into negotiations, pending which the disputed territory was to be held by a commission to be set up by the Council. On June 23, 1933, at 3.00 p.m., a League of Nations Commission hoisted a League of Nations flag at Leticia, and for exactly one year lacking four days it held and governed the territory. In that interim, a treaty was signed by Colombia and Peru on May 24, 1934. Ratifications of this treaty have not yet been exchanged, but the situation has ceased to give great concern. I submit that we must say that this incident shows that with a moderate amount of good will and with an unhalting cooperation among the various governments the collective system can work and can produce desirable results.

Of course I could dwell further on the credit side of the League's ledger. Acting under Article 11 of the Covenant, the Council had a great triumph last December in dealing with the flare-up between Yugoslavia and Hungary over the alleged harboring of terrorists. At its more recent session in January of this year, six disputes

[11] See Hudson, *The Verdict of the League—Colombia and Peru at Leticia* (1933).

involving thirteen States were on the Council's agenda. The history of any single dispute usually lengthens out over numerous sessions and the documentation is frequently enormous. The great feature of the Council is its continuity. The threads which were left at loose ends in January will be taken up again in April.

The formation of a general judgment of the collective system of maintaining peace cannot be based merely on the fulfilment or nonfulfilment of hopes entertained fifteen years ago. Some of those hopes may have been born of blindness to forces with which encounter was inevitable. A sharp break with the past does not destroy immediately the conceptions and policies which have ruled the past. Disillusionment is the usual price of failure to anticipate failure. For years I have been predicting that the League would fail in some of the crises which would confront it, and now that failures have come I do not propose to abandon the faith which I have held in the efficacy of intelligent effort. A return to the pre-war freedom of States to go to war as and when they please, would be, for me, inconsistent with all of the interests of the international community of this twentieth century. The only alternative is some development of the collective system, and I am not rash enough to attempt to foresee that development apart from growth within the organization now maintained by fifty-nine States of the world.

The Covenant will live not as so much black ink on white paper, nor as a gift from the harassed and uninspired men who made the questionable peace of Paris in 1919, nor as a series of obligations undertaken by so many States in a moment of righteous yearning. It will

live in ever changing conceptions and ever growing institutions which respond to the needs of international society. The ideas which dominated international relations for previous centuries will die, but they will die hard. It took two centuries to enthrone the idea of the King's peace in medieval England. I think we need not despair if it takes many decades to establish the new conception of the world's peace of this twentieth century.

III

PACIFIC SETTLEMENT THROUGH THE PERMANENT COURT OF INTERNATIONAL JUSTICE

IN a very vital sense, the Permanent Court of International Justice is one of the agencies of the collective system of pacific settlement with which I have been dealing. The question whether it is or is not a part of the League of Nations seems to me unimportant. One may answer that question either way. Certainly the Court is an essential part of the group of institutions upon which the success of the League method of pacific settlement depends. Historically, the Court was created by States acting through the League, and it has been maintained during the past thirteen years, the judges have been elected, and the expenses have been met, by States acting through the League. If one wishes to speak of it as a League Court, if he wishes to call it the judicial arm of the League, the facts abound which will enable him to gratify his desire. On the other hand, the Court does not exist under the Covenant, for to the extent that Article 14 of the Covenant has not been incorporated into Article 1 of the Statute of the Court, its force has been spent, it has become *functus officio*. The Statute is annexed to a Protocol of Signature of December 16, 1920, which is an independent international instrument, depending for its effect today, not upon any approval by the Council or Assembly of the League, but upon the signatures and ratifications by forty-nine States. The Court functions

under the Statute in complete judicial independence, and while it is now administratively connected with the League it might not be impossible to find other ways of meeting its administrative needs. Hence, if one wishes to say that the Court is independent of the League of Nations, he may be within the orbit of facts so long as he does not ignore the boundaries of that orbit. Whatever answer is given to this question, which by the way has never troubled anyone outside the United States, it is not to be disputed that the continued functioning of the Court is a cardinal necessity of the collective system of pacific settlement which our generation is struggling to establish.

Perhaps I should explain that for the sake of brevity I shall speak of the Permanent Court of International Justice as the World Court, and I make no apology for using this popular term. Sixty-one nations of the world —the forty-seven Members of the League of Nations which are parties to the 1920 Protocol of Signature, Brazil and Japan which are also parties, and twelve Members of the League not parties—are now maintaining the Court. Forty-two of these nations have given the Court the obligatory jurisdiction provided for in the "optional clause" annexed to the Protocol of Signature. Of the seventy-two nations of the world, only Costa Rica, Egypt, Saudi Arabia, the United States, and a few diminutive States like Iceland and Liechtenstein, do not share in the support of the Court; and to none of these States are its doors closed, if they should come seeking aid in handling their disputes. Truly, it is a World Court which sits at The Hague, and the law which it administers is designed to be a world law.

A mere glance at the history which I endeavored to trace in my first lecture will enable one to see what a big step forward the World Court represents. Less than twenty years ago the world had no permanent international institution devoted to the administration of justice. The establishment of the Permanent Court of Arbitration in 1899 was an important but feeble step in that direction. When the Hague Conference of 1899 adjourned, there was a loud protest because it had not been bolder. Eight years later the representatives of various States went back to The Hague determined to push for the creation of a really permanent court. The representatives of the United States at the second Peace Conference carried instructions to work for "a development of the Hague Tribunal into a permanent tribunal composed of judges who are judicial officers and nothing else, who are paid adequate salaries, who have no other occupation, and who will devote their entire time to the trial and decision of international causes by judicial methods and under a sense of judicial responsibility." These instructions were carried out, though the United States cannot claim any exclusive credit for the efforts made; and there was general agreement at the 1907 Conference upon both the need for a permanent court and the general lines to be followed in creating it. The rock upon which the effort was wrecked was the method of selecting the judges. International organization had not then progressed to a stage where any acceptable method could be found, and only the League of Nations and its reconciliation of the hegemony of the larger States with the claims of the smaller States to equality

enabled progress to be made in dealing with this question.

A host of problems arose in 1920 before the organization of the Court could be agreed upon. With the Council and Assembly at hand for the purpose, the suggestion by a Committee of Jurists that the judges should be elected by a majority in each of these two bodies was accepted almost as soon as it was made, without any prolonged debate. Nor was it difficult to agree that judges who were nationals of States before the Court should be permitted to sit, and that States without nationals on the Court should be permitted to have judges *ad hoc*. As the Court was looked upon as an essential link in the series of League organizations, it was quickly agreed that its expenses should be borne by the various States as part of the general budget of the League. No obstacle was encountered in establishing a skeleton of the procedure to be followed.

After the more perplexing problems of organization had been solved, interest centered chiefly on the jurisdiction to be conferred upon the World Court. Of course it was impossible, even at the close of the World War when the reins were so largely in the hands of a few men in a few governments, to think of forcing States to submit to an international court's exercise of jurisdiction such as that exercised by national courts over the people within the territory of the nation. The cardinal feature of the World Court, which it has declared to be a principle of international law, is that its jurisdiction depends upon the consent of the parties before it. The 1920 Committee of Jurists pursued a line of thought much insisted upon at the Hague Conference of 1907, and proposed

that the Court should be given obligatory jurisdiction with respect to generally defined categories of legal disputes, *i.e.*, the categories listed in Article 13 of the Covenant of the League of Nations; but unanimity on this point was not obtained in the Committee itself, for both the Italian and Japanese members made reservations. In the Council and Assembly of the League of Nations, the proposed obligatory jurisdiction was the subject of a contest which at times grew bitter. A more conservative group insisted that it was enough to create the Court, and that States should then be left free to use it as they might wish at the time. Even Lord Robert Cecil, harking back to the "vital interests" of States, wished the Court to be allowed to "develop organically." A compromise was finally adopted and embodied in Article 36 of the Statute, under which States desiring to do so might declare, either when they accepted the Statute or later, that between themselves the Court would be competent at the request of a single party to adjudicate any disputes falling into the categories which Article 13 of the Covenant had declared to be "generally suitable for submission to arbitration." This compromise was given special form in the so-called "optional clause." It was accepted by men like M. Max Huber of Switzerland as paving the way for a future development toward legal order. On the other hand, it was stoutly assailed by men like M. Loder of the Netherlands and M. La Fontaine of Belgium. M. Loder exclaimed, somewhat prophetically, "You are fighting against time; you will do so in vain."

The subsequent history may be taken to vindicate either the proponents or the opponents of the compro-

mise. Yet aside from the contest of 1920, subsequent events are chiefly important as indicating the steady progress which has become possible because the Court exists and because the world has confidence in its methods. By the end of 1921, some twenty-nine States had ratified the 1920 Protocol of Signature to which the Court's Statute was annexed, but only ten of them had made declarations giving the Court obligatory jurisdiction. In five more years, this latter number had increased to seventeen; but beginning in 1928 liberal governments sang out new clarions, and a whole procession of States made such declarations. Though the number has not greatly increased since 1931, forty-two States or Members of the League are now parties to the "optional clause" or to declarations made under Article 36 of the Statute. It is in many ways the most surprising development of the post-war period, pregnant with large possibilities for the extension of the reign of law during this twentieth century.

Perhaps we may be permitted to reflect a bit upon the way in which certain governments changed their positions on this question, and the reflection may bear upon the hospitality with which we shall approach a consideration of other limitations imposed by governments upon themselves. Let me describe, merely as an example, the shifting in the positions taken at different times by the British Government. In 1926 the British Imperial Conference expressed the view that insistence on the Court's being given obligatory jurisdiction was "premature." In 1928 the Government of the United Kingdom gave a reasoned statement of its hesitance to confer such jurisdiction on the Court, stating that "the

method of signing a general undertaking . . . lacks the flexibility which enables the measure of the obligation to be varied in the case of particular . . . States," and it thought that "more progress is likely to be achieved through bilateral agreements." In 1929, with a different party in power, the British Government signed the optional clause, explaining this course "as the logical consequence" of the treaty for the renunciation of war. Yet in this period from 1926 to 1929, there was no other great change in the general international situation to call for such a *volte face*. The whole world can be grateful to the British Government, for its action in 1929 was at least a factor in moving other governments to their willingness to enlarge the Court's jurisdiction.

A brief analysis of the provisions in the second paragraph of Article 36 of the Court's Statute may be a proper prelude to our inquiry into the effect of the declarations made under it.[1] All or any of four "classes of legal disputes" may be included in a declaration;[2] though numerous reservations have been made no State has wholly excluded any one of these classes. The first class is of disputes concerning "the interpretation of a treaty"; with some thousands of treaties in force today,[3] this class is very wide, probably wide enough to cover

[1] The English version of the Statute is reproduced in the Appendix, p. 134, *infra*.

[2] The writer has dealt elsewhere with the effect of the provision as to *legal* disputes. See Hudson, *Permanent Court of International Justice* (1934), pp. 392–393.

[3] It has been estimated that in 1914 more than 8,000 treaties were in force. 1 Oppenheim, *International Law* (4th ed.), p. 701 note. On February 1, 1935, 3,601 treaties or international engagements had been registered with the Secretariat of the League of Nations, practically all of which have been concluded since 1920; of course all of these treaties are not now in force, however.

the great majority of disputes which arise. The second class covers disputes concerning "any question of international law." This is so wide that it is difficult to imagine a dispute which it cannot be made to embrace. The third class is of disputes concerning "the existence of any fact which, if established, would constitute a breach of an international obligation." This adds little, if anything, to the preceding classes and its importance is slight. The fourth class includes disputes concerning "the nature or extent of the reparation to be made for the breach of an international obligation." If it does not greatly extend the jurisdiction as to other classes, this is a convenient addition to them. Taken altogether, the four classes cover practically every conceivable dispute which may be classed as "of a juridical order," or, as we used to say, every justiciable dispute.

Declarations under Article 36 may accept the Court's jurisdiction "for a certain time"; many of them have been limited to three, five, ten, or fifteen years, but most of them have been renewed as these periods have expired. They may also contain exclusions, for in 1924 the Assembly of the League of Nations recognized that States might make declarations "with the reservations which they regard as indispensable." Hence many States have excluded from the obligatory jurisdiction accepted disputes which have previously arisen, or which may arise out of past events such as the World War. Disputes for which treaties in force provide other means of settlement are commonly excluded, also, and domestic questions are frequently excluded. On the whole, the exclusions or so-called "reservations," though they are extensive, do not prevent the declarations from having a

wide range. They must be kept in mind in any appraisal of this whole development, and yet they are not so confining as to rob the development of a startling significance.

In this connection, I must also speak of another large potential source of the Court's jurisdiction. Many treaties have been concluded during the past fifteen years containing provisions that disputes as to the interpretation or application of their stipulations shall be referred to the Court. Many multipartite instruments now contain such provisions; for example, recent conventions on the counterfeiting of currency, on the suppression of slavery, on the traffic in arms and ammunition, on the manufacture of narcotic drugs. Numerous bipartite instruments likewise provide that disputes arising in their execution shall be referred to the Court; not merely instruments the chief object of which is to provide for pacific settlement, but also instruments dealing with the varied problems of everyday international life. The latest annual report of the Court lists 475 international treaties or conventions, not all in force, which contain some provision for reference to the Court. With such extensive arrangements looking toward possible resort to the Court, there is no reason to fear the drying up of its activity.

One of the surprises in connection with the work of the Court has been in the development and usefulness of its advisory jurisdiction. Of course no advisory function was envisaged for an international court in 1907, for such an international organization as the League of Nations then seemed to be a dream for a far-off future. When plans for a constitution of the League began to be

discussed, however, suggestions came from several sources that a court to be created should be available for the interpretation of the constitution and for giving authoritative legal opinions on other difficult questions which might arise. Valuable precedents for a provision to this end might have been found in Anglo-American and other systems of jurisprudence, yet the record does not permit one to say that such precedents figured very actively in the drafting of the provision in Article 14 of the Covenant that "the Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly." Even with this text before it, the Committee of Jurists which drafted the Statute of the Court showed little appreciation of this special competence to be given to the Court, and there was so little realization of the importance of this function in the Assembly that the Statute in its final form contains no mention of advisory opinions except as it incorporates by reference certain of the provisions in Article 14 of the Covenant.

When the Court itself began to plan for its exercise of advisory jurisdiction, a clear understanding seemed to be lacking of the precise nature of the office which it was to perform. Some of the judges questioned whether the giving of advisory opinions was a judicial function; some of them were willing that secret opinions should be given; most of them were reluctant to set the precise bounds of the Court's possible action until experience should have pointed the way. The three matters which first commanded the Court's attention were requests from the Council for advisory opinions as to questions relating to the International Labor Organization. From

the beginning, the handling of such requests was kept within the limits of judicial action and there has been a progressive tendency to assimilate advisory to contentious jurisdiction, at least where the requests have had to do with disputes between States. Despite the fact that an advisory opinion is not binding upon the parties to a dispute, nor for that matter upon the body at whose request it may be given, the Court has thrown about its discharge of this function all of the safeguards of judicial action. Opportunity is always given to interested States to be heard at every stage of a proceeding, and though their rôle in any such hearing is that of furnishing information the activities of agents and counsel are much the same as if the States which they represent were in a true sense parties before the Court. Since 1927 even *ad hoc* judges may be appointed by the States interested in a dispute concerning which an advisory opinion is requested.

The result of this development has been a frequent resort to this jurisdiction of the Court, and almost half of its time has been given to requests which have emanated from the Council of the League of Nations. Such is the confidence in the methods followed by the Court that the opinions given have commanded a great respect. Indeed in some quarters there seems to be a disposition to ignore the essential differences between opinions which are not, and judgments which are, binding.

I think I can best illustrate the usefulness of the Court's advisory function by giving a short résumé of a few of the cases in which opinions have been given. I am the less hesitant in asking your indulgence for this, because the whole subject of advisory jurisdiction has

been so misrepresented in this country. We have been told that it reduces the Court to the position of an attorney to the Council of the League of Nations, that it robs the Court of its independence as a judicial institution. The facts lend no support to these statements, as I think you will agree when we have glanced at a few of the cases.

Soon after the organization of the Court, during its first year, it was requested to give an opinion on a dispute between Great Britain and France concerning certain nationality decrees issued by French authorities in Tunis and in the French Zone of Morocco. These decrees had the effect of imposing French nationality, with such incidental burdens as that of military service, on certain British nationals resident in those territories, and their execution was stoutly resisted by the British Government. The French Government having persisted in its refusals to agree to arbitration, the British Government referred the matter to the Council of the League of Nations; but representatives of France contended that the dispute related to a domestic matter with which the Council was not competent to deal. This contention might have foreclosed the possibility of the Council's usefulness to the two Governments if there had been no way of obtaining an authoritative settlement of the legal problem which stood at the threshold of any consideration of the dispute. Fortunately, such a settlement could be obtained from the Court, and with the concurrence of the parties to the dispute the Council requested the Court to give an advisory opinion on the question whether the dispute "is or is not by international law solely a matter of domestic jurisdiction."

The two Governments presented their submissions to the Court, precisely as they would have done if the case had been before the Court for a judgment, and the Court had no difficulty in reaching a unanimous opinion,[4] the French judge voting against the French Government's contentions. It said that because of the numerous treaty provisions involved the dispute related to questions of international law and was not within the exclusive domestic jurisdiction of France. This conclusion was at once accepted by the French Government, and it led very promptly to an agreed settlement of the whole dispute, without further intervention by the Council.

A second most instructive case arose in 1923. In delimiting the boundaries between the two new States of Czechoslovakia and Poland, difficulties were encountered with reference to the boundary in a district called Jaworzina. Direct negotiations failed to produce any solution, though they were aided by the Conference of Ambassadors in Paris. Public opinion was aroused in the two countries, as well as in the region to be divided between them, and it prevented the politicians on both sides from yielding on certain legal points which conditioned any agreement; they could not agree to a judicial settlement. Perforce, however, the matter was submitted to the Council, the parties declaring that they would have no objection to the Council's asking for the Court's advisory opinion. Such a request was made by the Council, and the Court's opinion[5] on the legal questions in-

[4] *Publications of the Court,* Series B, No. 4; 1 Hudson, *World Court Reports,* p. 143.

[5] *Publications of the Court,* Series B, No. 8; 1 Hudson, *World Court Reports,* p. 254.

volved soon led to a settlement by the Council which satisfied public opinion on both sides.

The opinion of the Court which has aroused the widest public interest was that relating to a customs régime proposed to be established by Austria and Germany, in 1931. Austria had assumed obligations in the Treaty of Peace of St. Germain of 1919, and in a Protocol of Geneva of 1922, to refrain from alienating her independence and to abstain from any act which might directly or indirectly compromise or be calculated to compromise her independence. In other words, Austrian independence had been made a cornerstone of the political structure of Europe. When the Austrian and German Governments declared their intention to form a customs union, various States regarded the announcement as a threatened disturbance of the territorial *status quo*, and a very critical situation arose. It was precisely the kind of situation which twenty years earlier would have led to talk of war on a European scale. When the Council of the League of Nations took up the matter at the request of the British Government, it was contended particularly by French representatives that the new régime would constitute a violation of Austria's treaty obligations. With the concurrence of Austrian and German representatives, the Council voted unanimously to request the opinion of the Court on the question whether the proposed customs régime was compatible with Austria's treaty commitments. The question was thoroughly argued before the Court by counsel for the Austrian, Czechoslovak, French, German, and Italian Governments. A majority of the fifteen judges answered the question in the negative, as to Austria's obligations

under the Geneva Protocol; but it was an eight to seven opinion.[6] Even before the opinion was handed down, however, the Austrian and German Governments announced informally that they had abandoned their plans for the proposed customs régime. The mere fact that the matter was pending before the Court may have influenced this announcement; but whether this is true or not, the availability of the Court in this crucial matter served as a stabilizing factor in the European situation, and it may be thought that subsequent events have vindicated the conclusions reached by a majority of the Court.

I might continue this recital, but I think these three cases will serve to indicate the basis of my appraisal of the value of the Court's advisory jurisdiction as a method leading to the pacific settlement of disputes. Indeed, for some time I have been of the opinion that the Court's chief contribution to the maintenance of peace would be through the advisory opinions which it may give.[7] Short of adjudication, short of arbitration, here is a process by which States may, by going through the Council or Assembly, procure authoritative assistance and yet reserve to themselves a large measure of that freedom of action which they wish to guard so jealously. Advisory opinions may also serve to clear away the legal impediments to progress through the functioning of international institutions, and particularly the functioning of the agencies of the League of Nations charged

[6] *Publications of the Court,* Series A/B, No. 41; 2 Hudson, *World Court Reports,* p. 713.

[7] See "Ten Years of the World Court," 11 *Foreign Affairs* (1932), pp. 81–92.

with the responsibilities of pacific settlement. I cannot see how the Court has been in any way weakened by the possession of this jurisdiction, and certainly during the past thirteen years its contributions have been much greater in consequence.

In stressing the Court's contribution to pacific settlement through its advisory opinions, I must not leave with you an impression that its exercise of contentious jurisdiction is not also significant as a process bearing upon the maintenance of peace. It is true that many of the contentious cases before the Court have been of little general importance. The most recent judgment of the Court[8] may serve as an example; it dealt with a claim for damages made by Great Britain against Belgium, arising out of measures taken by the latter with reference to river transport in the Belgian Congo, to the alleged prejudice of a British national. Such cases have been well handled by the Court—though I say this without committing myself to agreement with all of its conclusions. They reveal the judicial process in action, they serve to clear away small matters of disagreement, and they may result in useful additions to a cumulating body of international case-law; yet they do not bear very intimately on the preservation of the world's peace. There are other cases, however, of which this latter point is not true, and I think I must ask your indulgence for a brief recital of two cases which will stand out in the history of international jurisprudence as *causes célèbres*. I shall deal with the *Free Zones Case* between France and

[8] In the *Oscar Chinn Case*, December 12, 1934. *Publications of the Court*, Series A/B, No. 63.

Switzerland, decided in 1932, and the *Eastern Greenland Case* between Denmark and Norway, decided in 1933.

The *Free Zones Case* came before the Court in 1928, under a special agreement between France and Switzerland. For more than a century, under provisions in various treaties, a customs régime had existed in certain French territories or zones around the Swiss city of Geneva, under which no customs duties were imposed on imports from Geneva into these territories; this meant that the French customs frontier was placed, with reference to these territories, at some distance behind the political frontier. As time passed, the servitude grew increasingly irksome to France. At the close of the World War, the French Government wished to free itself of this restriction, and certain provisions were inserted in the Treaty of Versailles, with communications exchanged by France and Switzerland, looking toward this end. In 1921 a convention was concluded on the subject, but a Swiss plebiscite prevented it from being brought into force. Thereafter, in 1923, against a vigorous protest by Switzerland, the French Government abolished the zones and advanced its customs frontier to the political frontier. An aroused public opinion in Switzerland insisted upon arbitration, and after long negotiations the two Governments agreed upon resort to the Court for an interpretation of the provisions in the Treaty of Versailles and for the settlement of all the questions involved. The case passed through three phases of court proceedings, each of which deserves our attention.

In connection with the special agreement, the two Governments agreed to raise no objection to the Court's communication to their agents of indications as to the result of its deliberations, before a judgment should be given, apparently with the idea of facilitating a settlement which they might reach by direct negotiations. The Court thought that such a course of action would not accord with "the terms and the spirit of its Statute," and it refused to communicate the results of its deliberations unofficially. After elaborate presentation by the parties, however, on August 19, 1929, it handed down an order[9] which, after stating the conclusion of the Court that the zones had not been abrogated by provisions in the Treaty of Versailles, accorded to the parties a period of eight months in which to seek agreement directly. When the negotiations were resumed, it immediately became clear that a basis of agreement was not yet to be found, even with the guidance of the Court's order. Hence a second phase of the proceeding before the Court became necessary.

Again the two States presented elaborate statements to the Court. The judges were at this time sharply divided as to the extent to which their ultimate disposition of the case was to be confined to a declaration of the existing law. On December 6, 1930, a second order[10] was issued, clarifying certain points which had baffled the parties in previous negotiations, and according to the parties a further period for reaching agreement. The

[9] *Publications of the Court,* Series A, No. 22; 2 Hudson, *World Court Reports,* p. 454.

[10] *Publications of the Court,* Series A, No. 24; 2 Hudson, *World Court Reports,* p. 484.

negotiations were again resumed and continued for several weeks without success. A third and final phase of the proceeding was then begun before the Court.

For a third time the Court heard elaborate arguments on behalf of the parties. On June 7, 1932, it gave judgment[11] to the effect that the Treaty of Versailles had not abrogated the treaties establishing the zones, and for the future it declared that France should conform to those treaties and that the French customs line should be withdrawn from the political frontier by January 1, 1934. Some details of the new régime remained to be fixed by the parties, or, failing their agreement, by the action of experts, and the Court took note of a Swiss undertaking to accord certain reciprocal advantages to inhabitants of the French zones. In other words, the great State of France, possessing the largest army in Europe, was told by the Court that its action in 1923 had been illegal, and the position taken by the small State of Switzerland was vindicated.

It still remained, however, to see whether France would accept this defeat. A judgment of the Court does not execute itself. The judgment in this case established the law, it specified the action which France should take to abide by the law, but no sheriff was at hand to see that the action was taken. Nor is the judicial process so firmly established in international affairs that one can be wholly confident that great States will always respect its bidding. In this case, however, we were not long kept in suspense. The French Government promptly announced, almost as a matter of course, that it would

[11] *Publications of the Court,* Series A/B, No. 46; 2 Hudson, *World Court Reports,* p. 508.

abide by the judgment. Experts were called upon to aid in the later negotiations, their regulations were accepted without question, and on the very day appointed by the Court the free zones were reëstablished by France.

If the *Free Zones Case* was a vindication of the judicial process in international affairs of the twentieth century, the *Eastern Greenland Case* is an even more striking triumph for the recent extension of law and order. The history of claims to Greenland reaches back into the Middle Ages, though until Admiral Peary's explorations late in the nineteenth century the world had not known that Greenland is an island. The western coast of Greenland with its more temperate climate has long been inhabited as a Danish possession, but control of the practically uninhabited eastern coast has long been claimed by both Denmark and Norway. Without attempting to review the history of this dispute, let us merely note that negotiations on this subject between these two countries had been intermittently active since 1919. Both Denmark and Norway desired to arbitrate the dispute in 1930, but they were unable to agree on the statement of a question to be arbitrated. On July 10, 1931, the Norwegian Government brought the matter to a head by issuing a royal proclamation which announced that Norway was taking possession of the territory in dispute and that this territory was thenceforth "placed under Norwegian sovereignty." Public opinion in both Denmark and Norway was deeply interested, and the proclamation created a tense situation between the two countries. "National honor and vital interests" were involved, and it was precisely the kind of question which has so often in the past led to war. It is therefore very

interesting for us to observe the course taken by the Danish Government when it was confronted with this attempt by Norway to create a *fait accompli*. It did not engage in recrimination, it did not fan the flames of patriotic fervor, it did not wait for resentment to smolder. As both Norway and Denmark were parties to the optional clause giving the Court obligatory jurisdiction, on July 12, 1931, within two days after the publication of the Norwegian proclamation, the Danish Government applied to the Court asking it to give judgment that the steps taken by Norway were in "violation of the existing legal situation" and were consequently "unlawful and invalid." To the credit of Norway, let us hasten to note that the Court's jurisdiction under the optional clause was not contested.

Denmark and Norway were thus arrayed for one of the greatest judicial contests in all history. Able lawyers were engaged, and for months they were busy combing the history of the exploits of Nordic vikings over a period of a thousand years to find historical incidents upon which to hang their claims. Volume after volume of documents was submitted to the Court, and a mere list of the 650 documents and maps occupies twenty-three pages in the official report. From November, 1932, to February, 1933, forty-eight sessions of the Court were devoted to hearing the oral arguments made on behalf of the two Governments. Finally, on April 5, 1933, by twelve votes to two, the Court gave its judgment,[12] declaring as Denmark had requested that the measures taken by Norway were in violation of the existing legal

[12] *Publications of the Court,* Series A/B, No. 53.

situation and were consequently unlawful and invalid. I shall not attempt to state the reasons, chiefly historical, upon which this judgment was based; for present purposes, it is sufficient for us to note that the judgment, though it broke new ground, was almost unanimous.

Then, the vital question arose, would Norway abide by this judgment? The result was a grave disappointment to the Norwegian public, it meant the defeat of national aspirations long entertained, it involved an abandonment of governmental enterprises upon which time, energy, and money had been expended. Yet such is the discipline resulting from the international education of Scandinavian peoples through generations that the Norwegian Government did not hesitate. Within two days after the judgment had been handed down at The Hague, a new proclamation was issued at Oslo canceling the original proclamation of July 10, 1931. With that action, the eastern Greenland dispute was relegated to history.

After its successes in handling the *Free Zones Case* and the *Eastern Greenland Case,* I think no one can deny to the Court an important place among the agencies upon which this twentieth century may depend for the maintenance of peace. The French and Swiss Governments in the one case, and the Danish and Norwegian Governments in the other, have contributed to the setting of a new standard of international conduct; they have reinforced confidence in the processes of law and order.

I cannot leave this subject without a reference to the more general influences of the Court bearing upon the development of the process of pacific settlement. I have

already spoken of the new body of cumulating case-law which the Court is building. This rôle in the current development of international law may not be sufficiently appreciated outside of professional circles. A new growth-factor has come into the law of nations. Arbitral tribunals of the nineteenth century were seldom in a position to maintain continuity in their work; they were created *ad hoc,* their personnel lacked experience, and frequently their awards were buried in inaccessible places. This was true even of the tribunals of the Permanent Court of Arbitration, for as Mr. Choate observed at the 1907 Hague Conference each case before such tribunals was "isolated, lacking both continuity and connection with the others." Fortunately, the World Court is in a position to weave a consistent legal fabric; the legal materials mentioned in Article 38 of its Statute, which the Court has a mandate to draw upon, are described in terms which do not prevent it from acting creatively. In these thirteen years of activity the Court has shown itself duly appreciative of the need for new principles, yet it has been willing to develop them out of old precepts. Without accepting any doctrine of the binding force of precedents, it frequently cites its previous judgments and opinions. For a short period a few years ago hopes were entertained of achieving progress in the development of international law through the process of codification; but for the time being at any rate a stalemate has been reached in that process, and present prospects for such progress depend upon the two activities of international legislation and international adjudication. I have no doubt that fifty years hence, one of the chief storehouses of the then prevailing interna-

tional law will be the collection of the Court's judgments and opinions.

Of course there have been occasions when the cry has gone up that the Court has acted on political as opposed to juridical considerations. I know of no active court of last resort which has kept itself free of such criticism. Certainly not the Supreme Court of the United States, which, as Mr. Dooley said, follows the "eliction returns"; certainly not the Supreme Court of Canada; certainly not the House of Lords or the Judicial Committee of the Privy Council in Great Britain. The majority opinion of the World Court in the *Austro-German Customs Régime Case* was said by many people to have been dictated by politics. No one hinted that the judges yielded to pressure from the politicians in their home countries; it was merely said that they gave effect to the policies of their own Governments. It is always a delicate line to draw between law and politics, as must be apparent to anyone who has read the recent gold-clause decisions handed down in Washington. Yet it must be clear that no valuable or lasting contributions to international law can be made unless they take account of the fundamental political situation existing at the time. Law cannot grow in a vacuum. It is not an expression of immutable absolutes. It is not a vise in the grip of which succeeding generations of men and women must submit to be held. A living law must fit conditions of the time and place. It must enable men to move. It must be cast upon a background of political realities. For this reason, I was not much disturbed when in the *Austro-German Customs Régime Case* a majority of the Court stressed "essential features" of the "existing political settlement"

in Europe; its attitude was perhaps sounder than that of the minority, which, in refusing to be "concerned with political considerations," insisted that the question before the Court was "purely legal."

The occasions have been rare, however, in which any judgment or opinion of the Court has drawn fire from nonprofessional critics. Both in lay and in professional opinion, its prestige has steadily grown. At no time has its authority been flouted. As a whole its judgments and opinions are received throughout the world today as a foundation-source of twentieth-century international law. Fortunately, they are available for use as such, for the Court is probably the best documented public institution now existing in the world.

In consequence of its prestige, the Court has been enabled to make another contribution which is of outstanding importance. Its influence is manifest not merely in the cases which have come before it, but also in the settlement of innumerable cases which have never reached its bar. The mere fact of the Court's existence, the mere fact that it is at hand so that negotiators for States may talk of the possibility of its use, operates in itself as an encouragement to agreement. If time permitted, I could cite instance after instance of what I might call the invisible influence of the Court, but I shall only refer to one development in which this influence has been the moving factor. Since the Court opened its doors in 1922, numerous treaties of pacific settlement have been concluded, the principal provisions of which are based upon the premise of the Court's usefulness as an ultimate if not as an immediate resort. I shall later attempt to outline the system of pacific settlement which

those treaties create. Let me now point out, merely, that in facilitating the negotiation of those treaties, the Court has made one of its great contributions.

I have no doubt that when the history of our times comes to be written, the creation of the Permanent Court of International Justice will be put down as one of the principal achievements in these post-war years in the field of international relations. A whole generation of effort came to fruition when in 1920 general agreement was reached upon the Statute of the Court. Once that stage was reached, progress was very rapid, and in a short period of fifteen years the "permanence" of the Court seems assured. With reference to few human problems does it seem possible to make advances which enable one to say that a job has been done once and for all. Changes in the Statute of the Court will doubtless be made as experience accumulates—indeed, amendments are now pending; many features of the Court may still be far from final. Yet I cannot but feel it to be most improbable that our international community will ever again be willing to be without some such agency, or that the long struggle to establish it will have to be waged over again.

IV

TREATIES ON PACIFIC SETTLEMENT SINCE 1920

THE past fifteen years have seen a remarkable development in the provisions made by States for the pacific settlement of disputes which may arise between them. This development has proceeded chiefly from the advances made in the creation of the League of Nations and the Permanent Court of International Justice. Even apart from those agencies, however, some changes in prevailing styles have been made. States are very imitative in these matters, and just as in the early years of the century they hastened to adopt attractive formulas which had been inspired by the work of the Hague Conferences, so more recently the formulas inspired by the progress of the collective system have been widely copied, even by States which hesitated to go along with that general movement. The result has been a complete overhauling of the pre-war treaties, more uniformity in their provisions, a large extension of their scope, and far greater popularity for their aims.

Prior to 1900 few general treaties of arbitration had been concluded, some of the more advanced being treaties to which one or more South American States were parties.[1] In 1902 a lead was taken by Spain in negotiat-

[1] For a list of arbitration treaties of the nineteenth century, see Manning, *Arbitration Treaties among the American Nations* (1924), p. ix; Myers, "Arbitration Engagements," in *World Peace Foundation Pamphlet Series*, Vol. V (1915), No. 5.

ing treaties with Latin-American States, under an enthusiasm which resulted from the work of the Hague Conference. In 1903 the British and French Governments followed the Spanish lead, but elaborated the Spanish form and related it more closely to the Permanent Court of Arbitration. The British-French formula soon became the standard, and down to 1914 it was used as a model in many treaties. The Spanish treaties usually excluded disputes affecting either the independence or the national honor of the parties. The British-French convention of 1903 envisaged the reference to the Permanent Court of Arbitration of differences "of a legal nature or relating to the interpretation of treaties," provided "that they do not affect the vital interests, the independence, or the honor of the two Contracting States, and do not concern the interests of third parties." This stock formula was followed by France and Great Britain in their treaties with other States; and it was adopted by various other European governments. In 1904 Denmark and the Netherlands entered into a more inclusive treaty, but their example was not followed by other States. Altogether, more than one hundred treaties were modeled on the formula in the Franco-British example before the end of 1914.[2] In 1908 the formula was taken up by the United States and made the core of more than twenty-four of the so-called "Root Treaties";[3] indeed, it was

[2] See *Traités Généraux d'Arbitrage communiqués au Bureau International de la Cour Permanente d'Arbitrage* (of which five series have been published).

[3] The so-called "Hay Treaties" of 1904, which were never brought into force because of conditions set by the Senate of the United States, embodied the same formula. The "Root Treaties" carried an added provision that each reference to arbitration should be made with the advice and consent of the Senate of the United States.

embodied in treaties made by the United States as late as 1924 and 1926 with Sweden and Liberia.

I do not need to dwell upon the inadequacy of these treaties. They were mainly lip-service only to the cause of arbitration, and they may have been positively harmful in lulling to sleep a public opinion which might have insisted upon something more real. Not merely was it necessary for all parties to a dispute to agree upon a statement of the question to be arbitrated, upon the arbitrators to compose the tribunal, and upon the procedure to be followed; it was also possible for a party to say that any particular dispute involved its "national honor" or "vital interests," with the result that the seeming obligation of the treaty would become inapplicable. If the treaties served a useful purpose in paving the way for subsequent developments, the elasticity of their terms left holes through which all reality of obligation trickled away. This was realized by the United States and Great Britain when in 1911 they made an abortive attempt to conclude a more significant engagement to arbitrate.

No further progress was made until in 1913 Mr. Bryan, as Secretary of State of the United States, launched his plan for a series of treaties for the "advancement of peace." The central idea of this plan was that every dispute not otherwise settled should be referred to a permanent international commission set up in advance for investigation and report, that this report should be made within one year, and that while no State was bound to accept the report the parties to the treaty should agree to refrain from beginning hostilities and declaring war until the report was completed and sub-

mitted for their consideration. In other words, the plan was based upon the idea that some wars, at any rate, are due to hasty action in an excited moment, and it was designed to provide a "cooling-off" period in which wisdom and common sense might have a chance to operate. The United States offered to conclude treaties embodying this plan with all the States which maintained diplomatic representatives at Washington, and in the year just preceding the World War, twenty-one such treaties were signed, seven of which were with non-American States. But for the World War, the movement might have had immediate influence. Yet as things turned out, public interest in the Bryan Treaties soon evaporated; while twenty of them[4] were brought into force before 1917, the permanent commissions were never called upon to function, many of them fell into desuetude, and a whole decade elapsed before there was any attempt to breathe new life into the treaties.

During the years immediately following the World War, energies were absorbed in the big task of establishing the League of Nations and the World Court; but success in this direction soon led to a revival of interest in further improving arrangements between two or more States for the pacific settlement of their disputes. The path was blazed for a new type of treaty, as early as 1921, by Germany and Switzerland. A fruitful step was taken by the Assembly of the League of Nations on the initiative of Scandinavian delegations in 1922, when a resolution was adopted recommending that, subject to the provisions of Article 15 of the Covenant, States

[4] See Scott, *Treaties for the Advancement of Peace* (1920), p. 146.

should "conclude conventions with the object of laying their disputes before conciliation commissions formed by themselves." Nine "rules" were drawn up as suggestions which might be followed in creating permanent conciliation commissions. In the immediately succeeding years a number of special conciliation treaties were concluded, and more and more provisions for conciliation began to find place in general instruments. The new system of conciliation employed many of the ideas contained in the Bryan Treaties of the earlier decade.

Moreover, partly in consequence of the discussions of the abortive Protocol of Geneva of 1924, partly also in consequence of the Locarno agreements of 1925, new styles began to appear in arbitration treaties, and extraordinary progress began to be made in treaties providing for conciliation, arbitration, and compulsory adjudication, or for some combination of them. A single collection of the texts[5] reproduces more than eighty treaties concluded between 1923 and 1927; in 1928 the movement yielded the unprecedented number of thirty-seven treaties, and in subsequent years the pace has abated but little. Models of treaties recommended by the Assembly of the League of Nations in 1928 have had a considerable influence. On January 1, 1935, 238 special treaties of pacific settlement had been registered with the Secretariat of the League of Nations.[6] As might have been expected, it was the smaller States of Europe, particularly of northern Europe, which led in this develop-

[5] Max Habicht, *Post-War Treaties for the Pacific Settlement of International Disputes* (1931).

[6] Press release by the Secretariat of the League of Nations, February 19, 1935.

ment—the same States which had promptly accepted the obligatory jurisdiction of the World Court. The record of Denmark, Finland, Sweden, and Switzerland is most enviable in this connection, and, after Locarno, that of Germany was very creditable. On the other hand, certain States have had little part in this development. The conclusion of such special treaties has not been a part of British or Japanese policy; Great Britain has relied on more general commitments, and Japan has kept almost wholly aloof. France and Italy have each made a large number of these treaties.

In 1928 the Government of the United States awoke quite suddenly to the fact that its abstention from the League of Nations had led it into a backward position in this respect. The expiration of a number of the pre-war arbitration treaties was the immediate occasion for this realization. On February 6, 1928, the Governments of the United States and France entered into a new arbitration treaty which was later offered by the United States as a model for treaties with non-American States. A large number of treaties of conciliation and arbitration to which the United States is a party have since been brought into force, constituting today a system of pacific settlement which we may pause to examine in some detail.

The prevailing American system consists of two parts. The first part is a series of some forty or more conciliation treaties which follow the Bryan model of 1913, eighteen of which have been concluded with European States since 1928. The pre-war Bryan Treaties have been resuscitated by filling the personnel of the commissions, and such treaties have been concluded with a number of

additional countries. We participate today with about forty other States in maintaining permanent commissions.[7] The second part of the system is a series of some twenty-seven arbitration treaties with European States, all concluded since 1928, based not on the model of those which we concluded prior to the war but upon a formula borrowed from the abortive treaties negotiated with France and Great Britain in 1911. Under this formula,[8] arbitration is provided for differences not adjusted by diplomacy or conciliation, provided they relate to international matters, provided the parties are concerned by virtue of a claim of right by one against another, and provided the differences are "justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity." Such differences are to be "submitted to the Permanent Court of Arbitration" or to "some other competent tribunal."

Obviously this American formula is very tenuous, and it constitutes little improvement on that in the arbitration treaties which we concluded almost thirty years ago. Before the obligation to arbitrate can become effective, the following conditions must be met: (1) a dispute must relate to an international matter and it must not fall within the domestic jurisdiction of either party; (2) it must relate to a claim of right, *i.e.*, it must be juridical; (3) it must also be justiciable; (4) it must not involve the interests of third States; (5) it must not relate to the Monroe Doctrine or involve the obligations of the

[7] For a list of the personnel of these commissions, see *Publications of the Department of State,* Conference Series No. 20 (1935), pp. 51–60.

[8] See the analyses of the Franco-American treaty of 1928 by Chandler P. Anderson and the writer, in 22 *American Journal of International Law* (1928), pp. 362, 368.

Covenant of the League of Nations; (6) the parties must agree upon a precise statement of their difference; (7) the parties must agree upon a tribunal, and they may have to create a tribunal *ad hoc;* (8) so far as the United States is concerned, the reference to arbitration cannot be by the President alone, but he must act with the advice and consent of the Senate. With these limitations, it is almost impossible to conceive of a case in which one or the other of the parties could not find that one or more of these conditions had not been fulfilled, and if so no method is provided for an impartial review of its judgment, though the obligations of the conciliation treaty would be brought into play before any hostilities could lawfully be begun. I can only conclude that while the American treaties may serve as encouragement to peaceful settlement, may therefore enable politicians to withstand popular insistence, they do not constitute in any sense effective arrangements for obligatory settlement without resort to arms.

Perhaps we may better appreciate the inadequacy of the current American formula if we compare the treaties of the United States with those entered into by certain other States.[9] For this purpose I shall first summarize the provisions of a treaty of 1925 between Switzerland and France: failing other disposition, all disputes are to go first through a process of conciliation before a permanent commission; if no settlement results, all legal disputes are to go to the World Court, and it is expressly set out that the Court may determine

[9] See the *Systematic Survey on Arbitration and Security,* published by the Secretariat of the League of Nations (2d ed., 1927). Document C. 653. M. 216. 1927. V.

whether it has jurisdiction; all other disputes without qualification are to be submitted to arbitration, and provision is made for a method of creating arbitral tribunals *ad hoc;* any dispute as to the application of the treaty is to be taken to the World Court. Here the World Court is made the focal center of an "all-in" system of settlement. A treaty of 1926 between Belgium and Sweden goes perhaps further: conciliation before a permanent commission is first provided for; that failing, all legal disputes are to go to the World Court, and if the parties cannot agree upon the reference, the Court may exercise jurisdiction on an application by either party; all other disputes are to be arbitrated, but the parties will have to coöperate in setting up the tribunal; any dispute as to the interpretation of the treaty is to be submitted to the World Court. Mention may also be made of a treaty of 1929, between France and Spain, brought into force in 1932: conciliation before a permanent commission is provided for all disputes; that failing, all legal disputes are to be referred to the World Court, and if a special agreement cannot be made by the parties, either party may make the reference; all other disputes may in last resort be placed before the Council of the League of Nations for decision "in accordance with the Covenant"; any dispute as to the interpretation or application of the treaty may be brought before the World Court by either party. I might continue this analysis for several hours, but I think these treaties will sufficiently indicate some of the styles which are now current; each of those I have mentioned is typical of many others. In other words, many States of the world have endeavored during these latter years to push for-

ward all-inclusive arrangements which with the aid of the World Court or the Council of the League of Nations will embrace any dispute which may arise between them. Such arrangements would have been thought fantastic twenty years ago; they pursue lines of which hardly any traces are to be found in prewar agreements. And I think you will agree that they are many milestones in advance of anything to which the United States has committed itself.

As I have reviewed this progress in the negotiation of special bipartite instruments, the thought possibly has occurred to you that much energy could be saved if larger groups of States could unite upon multipartite arrangements for pacific settlement. I am also able to report to you a big advance in this direction. Before 1914 little effort was directed to this end, though in 1902 an arbitration convention was signed at Mexico City on behalf of nine American States, and four of them later ratified it. When the perfection of arrangements for pacific settlement began to interest the Assembly of the League of Nations, a general world convention at once appeared to be a desideratum to be kept in mind. The Assembly resolution of 1922 on conciliation envisaged a future possibility of "the establishment of a general convention open to the adhesion of all States." This was followed in 1923 by work on a draft treaty of mutual assistance designed to be the basis for efforts to promote disarmament. At this time disarmament became the third part of the trilogy—arbitration, security, disarmament. In 1924 all energies at Geneva were concentrated upon an enthusiastic effort to launch a very inclusive general arrangement which could be opened for signa-

ture by all members of the League of Nations. The result was the famous Protocol of Geneva, which for a brief moment occupied the international stage as the most advanced instrument ever negotiated. Though it was signed by a number of States, this Protocol was robbed of any real vitality by a provision that it should not come into force until a plan for the reduction of armaments was adopted; attempts to draw up such a plan have proceeded through all these intervening years and they are still in an almost hopeless stage of gestation. If the Protocol of Geneva proved abortive, however, it has had a very marked influence on subsequent thinking and planning for arrangements of pacific settlement, and in the minds of some people it may still be a goal of aspiration.

It is one of the consequences of the continuity of the agencies of the League of Nations that a failure is never final. Defeat after defeat piles up at Geneva, only to form a springboard for approach to later success. The Protocol of Geneva was soon dead, but it was never buried. In a few years began the rush to sign the optional clause of the Statute of the World Court which had served as a central consideration in the Protocol. In 1928 various other ideas of the Protocol were reshaped, and, immediately following the signature of the Paris treaty for the renunciation of war, the Assembly of the League of Nations again found itself engrossed in an effort to extend the law of pacific settlement on a world-wide basis. On September 26, 1928, it launched a General Act for the Pacific Settlement of International Disputes, to which all States were invited to accede, as well as three model "bilateral conventions" by which

States were invited to guide themselves in making special agreements. Like the Hague Conventions of a quarter of a century earlier, the Geneva General Act served as an available codification of the law of pacific settlement according to the latest styles prevailing. While States have not been in reckless haste to accede to it, there were three accessions in 1929, five in 1930, eleven in 1931, and two in 1934; today twenty members of the League of Nations have acceded to the whole of the Act and two additional States have acceded to parts of it. Again it is to be noted that all of these twenty-two States, which include France, Great Britain, Italy, and Turkey, have also accepted the obligatory jurisdiction of the World Court. As these accessions to the General Act are the equivalent of some two hundred bipartite engagements,[10] its success is one of the outstanding features of post-war effort.

The General Act contains four somewhat independent chapters, designed to permit States to accept parts only.[11] The first chapter provides for the submission of all disputes to a procedure of conciliation before a permanent or special conciliation commission, and it elaborates the details of the organization and procedure of these commissions. The second chapter provides, subject to the conciliation procedure, for the submission to the World Court of all disputes involving rights, *i.e.*, juridical disputes, unless they are submitted to arbitration; and in the last resort a submission to the Court

[10] The number is somewhat smaller because some members of the British Commonwealth of Nations are not committed *inter se*.

[11] The English version of the General Act is reproduced in the Appendix, p. 157, *infra*.

may be effected by an application by only one party. The third chapter provides for the arbitration of nonlegal disputes, with stipulations as to the creation of arbitral tribunals which significantly do not mention by name the Permanent Court of Arbitration. The fourth chapter contains general dispositions. An acceding State may accept any one or more of the first three chapters, but it must accept the fourth chapter so far as it is applicable; and any one or more of listed reservations may be made at the time of accession. The Act may be denounced by any State at five-year intervals.

I have attempted to outline rather than to summarize the General Act, but I think it will be clear to you that its provisions constitute a landmark on this long road which the world is traveling toward the reign of law. It is a valuable supplement to the Covenant of the League of Nations and the Statute of the World Court, and its influence has been wider than the number of accessions would indicate.

More recent multipartite instruments defining aggression may be thought to fall outside the scope of this survey. They are primarily designed to provide not means of pacific settlement but obligations to refrain from stipulated acts of aggression, including a declaration of war, invasion or attack with or without a declaration of war, naval blockade, and the support of marauding bands. The Government of the Soviet Union has assumed the leadership in promoting the assumption of such obligations, and today it has nonaggression treaties with most, if not all, of its neighbors.[12] Some of these

[12] For example, see the convention of July 4, 1933, 148 *League of Nations Treaty Series*, p. 211.

treaties are also supplemented by arrangements for pacific settlement.

I have now dealt with the outstanding multipartite arrangements of recent years which had their origin in European initiative. Astonishing progress can also be noted in this western hemisphere. If all of the twenty-one American Republics cannot claim credit for it, all of them have participated from time to time in its unfolding, and many of them are also to be accredited with participation in efforts made at Geneva.

Since the beginning of the series of international conferences of American States in 1889, insistence has centered on the improvement of machinery for settling inter-American disputes; the first conference, held in that year, declared the settlement of disputes by arbitration to be "a principle of American international law," but a convention which was drawn up after its adjournment was never ratified. Further efforts made at conferences in 1902, 1906, and 1910 yielded only slight results. At the fifth conference in 1923, a treaty to avoid or prevent conflicts between American States was opened to signature, under which permanent commissions were established to aid in the creation of commissions of inquiry to which all disputes might be submitted for investigation and report. However, such a report was not to have the character of a decision or award. Pending such procedure, the parties undertook to refrain from certain hostile acts. This so-called "Gondra Treaty," which has now been ratified or adhered to by nineteen of the American States, is really a treaty of conciliation.[13] No progress was made at the sixth conference at Havana in

[13] The English version is reproduced in the Appendix, p. 147, *infra*.

1928, beyond a general expression of condemnation of war and of commendation of obligatory arbitration and a provision for a later conference in Washington.

In 1929 a special conference of American States was held at Washington, devoted to the subjects of arbitration and conciliation. It succeeded in launching a convention on arbitration,[14] the principal formula of which was borrowed from the arbitration treaties entered into by the United States in 1928. Disputes within a State's domestic jurisdiction and not controlled by international law were excepted. If no other tribunal can be agreed upon, the arbitration is to be by a tribunal created *ad hoc*. This convention has been widely hailed as a great advance;[15] in fact, it harks back to styles long since discarded by some States, and it has the great disadvantage of illusoriness. Moreover, it fails to take adequate account of the fact that a number of American States have gone far ahead of its provisions by making declarations accepting the obligatory jurisdiction of the World Court. Twelve American States have now ratified the Washington convention, with important reservations in some cases. In the United States, the Senate has consented to ratification of the convention, but only on condition that each reference to arbitration under its provisions is agreed to by a two-thirds vote of that body, and with the exclusion of an important class of disputes.

The 1929 conference also launched a convention on conciliation which conferred conciliatory jurisdiction on both the permanent and the special commissions pro-

[14] The English version is reproduced in the Appendix, p. 169, *infra*.
[15] See Charles E. Hughes, *Pan-American Peace Plans* (1929).

vided for by the Gondra Treaty. As to the special commissions, however, this was a step in the dark, for such commissions were only to be created *ad hoc;* to remedy this defect in the system, the Montevideo Conference in 1933 provided for an addition to the Gondra Treaty. The Conciliation Convention has now been ratified by fourteen of the American Republics.

To this schematic series of instruments, a fourth was added when the Seventh Conference of American States, meeting at Montevideo in 1933, called upon all American States to complete their ratifications of all of the series, as well as of the Treaty of Paris of 1928. The fourth instrument is the Anti-War Treaty, signed at Rio de Janeiro by six American States on Argentine initiative, on October 10, 1933, and generally known as the Saavedra-Lamas Treaty.[16] When it was concluded, this treaty was opened to accession by all other States, and some thirty or more States, not all of them American States, have either signed it or acceded to it or have expressed their intention to accede. This treaty has been acclaimed in certain parts of the world as a forward step. It is in some ways a restatement of what is contained in other instruments, though it adds some provisions not to be found elsewhere. It first restates the substance of the treaty for the renunciation of war, substituting wars of aggression for war as an instrument of national policy. A new declaration is added that territorial questions must not be settled by violence, and that territorial arrangements obtained by other than pacific means will not be recognized. A provision for common

[16] An English translation of the text is reproduced in the Appendix, p. 182, *infra.*

efforts to maintain peace against any violation of the treaty is made subject to other collective treaties; significantly, however, as neutrals in any war the parties agree to adopt "a common and solidary attitude." Further provisions of the treaty dealing mainly with a conciliation procedure register little if any advance on other instruments, for they permit limitations not elsewhere formulated; the report of the conciliation commission is not binding on the parties. The treaty must therefore be viewed as an enunciation of certain principles, the application of which is largely left to States' inclination and willingness at the time occasion presents itself for their application. It does not tie up with any permanent institutions; it stops short even of the obligatory provisions in the Washington Convention on arbitration; it lacks the codifying value which attaches to the Geneva General Act. The question then arises, why have so many States declared that they intend to be bound by the Saavedra-Lamas Treaty? The answer must be that the acceptance of this treaty has furnished a bridge which has led to a wider extension of the system of American treaties.

Let me now summarize this account of the development of treaties of pacific settlement since 1920. Fifteen years of activity have produced really astonishing results. Inspired chiefly by the collective system of the League of Nations and the World Court, many States of the world have completely renovated their obligations in special treaties; certain European States particularly have brought into vogue new formulas, some of which proceed very far toward all-inclusive arrangements in advance for dealing with disputes by an orderly process.

While the United States has been very active in this process of renovation, it has not kept up with the styles prevailing elsewhere. Paralleling this extension of special arrangements, numerous multipartite agreements have been launched; undismayed by defeats, States have persisted in such efforts with some signal successes. The Geneva General Act of 1928 is a global arrangement for conciliation, arbitration, and adjudication which twenty-two States have accepted and which sets the most advanced standard now prevailing. An inter-American system, consisting of the Gondra Treaty of 1923, the two Washington conventions of 1929, and the Saavedra-Lamas Treaty of 1933, offers a more or less schematic framework for use by the American Republics.

As a whole, these developments had no prototype before 1914. They have broken a great deal of new ground. They constitute a tangible expression of a new aspiration. They hold before the world a new ideal of peace and order. To quote my eminent colleague at Oxford, "the mere juridical framework of peace is already constructed, and it is good. It may need occasional amendment; it does not need a fundamental reconstruction."[17]

I must not close this recital, however, without qualifying this judgment of post-war progress. When I dealt with the League of Nations, and later when I attempted to appraise the World Court, I could ask you to scan a record of intensely practical achievement. In contrast, what I have described in this lecture is largely a develop-

[17] Professor J. L. Brierly, in the *British Year Book of International Law, 1930*, p. 133.

ment on paper, which has not faced the test of use. Few of the special bipartite treaties have been applied in controversy, and no dispute has been disposed of in application of the provisions of the Geneva General Act. Few of the numerous conciliation commissions now in existence have been called upon to function. Parts of the Inter-American collective system have been called into play, particularly in the Chaco dispute between Bolivia and Paraguay, but without conspicuous success. Yet we must realize that the mere formulation of arrangements for pacific settlement may exercise a beneficent invisible influence on the action of Governments, and it frequently serves as a peg upon which peoples may hang their insistence. For this reason, though I am disposed to qualify my estimate of the recent advance, I do not hesitate to say that the advance has been made, or that it represents a significant departure from prewar aims and ambitions.

Perhaps I should here make a further observation. In the course of this lecture, it may have occurred to you that there is some measure of duplication in the international instruments which I have described.[18] Closer analysis may reveal that there is less duplication than I have led you to believe, yet I must admit that some of it does exist. For instance, provisions of the treaty for the renunciation of war have been repeated in the Saavedra-Lamas Treaty and elsewhere; and States parties to the Geneva General Act are also parties to other treaties which contain very similar obligations. Is the restatement of obligations previously undertaken a source of

[18] See the observations of Dr. James Brown Scott, in the *1934 Yearbook of the Carnegie Endowment for International Peace*, pp. 97–102.

weakness or a source of strength? It has the disadvantage of furnishing a basis for distinctions which may lead to escapes, for there are always slight variations to be seized upon; but it has the advantage of cumulating insistence, and each reiteration may serve to increase the familiarity of obligations in public opinion.

The weakness of the newer treaties which I have described lies in their excessive reliance on *ad hoc* agencies, the creation of which always presents opportunity for disaccord. Their strength lies in their insistence on order, and in their relation of this insistence to the availability of permanent, continuous, and growing institutions which are the flesh and blood of a new international order.

CONCLUSION

WHEN I began these lectures, it was assumed that Article 2 of the Briand-Kellogg Pact creates for each of the sixty-three States which are parties a legal obligation to refrain from seeking the settlement or solution of any international dispute or conflict otherwise than "by pacific means." A treaty is an instrument of public law, and it is not to be dissected by lawyers as they would dissect an instrument of private law such as a contract or a deed. For this reason, I am not willing to view the provision in the Paris Treaty as a mere expression of pious hope. Instead, I regard it as a binding undertaking behind which rests the compulsive force of international law. This conclusion is not dissipated by the generality of the undertaking, though it cannot be disputed that the practical significance of the obligation is greatly reduced because it is not connected with the use of any specific agencies of pacific settlement; and I may add that so many States have probably been willing to assume the obligation precisely because of its generality.

Holding this view, I have undertaken with you a series of explorations to determine how far the obligation of the Briand-Kellogg Pact can be said to be implemented by the present-day law of pacific settlement. The object of these lectures has been to describe and to enumerate the pacific means which are now available to the parties to that instrument for seeking the settlement of their disputes or conflicts, in order that they may not be driven to violate their obligation. I think we can say

that we have found perhaps not adequate but at any rate numerous and various means which are at the disposal of States for this purpose. If you share this view, then we are able to say that Article 2 of the Briand-Kellogg Pact is not a shot in the air; its force is not destroyed by its generality; avenues are in front of us by traveling along which States may respect their obligation. In other words, the Pact is, to this extent, implemented.

In saying this, I do not wish to be understood as prophesying that all disputes will be settled "by pacific means." I have assiduously attempted to avoid the rôle of prophet. I realize only too well the forces in world politics which are not restrained by legal commitments, the temptations to which States are subject, the ambitions which may not brook frustration by past commitments. If one wishes to dwell upon these features of our present world scene, there are plenty of reasons for foreboding. Not only is the World Disarmament Conference in the doldrums; it gives every evidence of all but complete failure. In its wake, an armaments race is already in progress, the results of which will not be confined because each people is able to shift the responsibility to some other people. The recent World Economic Conference ended in futility, with only slight exceptions, and we are now in the grip of economic dislocations which the policies of Governments are only aggravating. Moreover, enough time has now elapsed to free certain peoples from the feeling that they must abide by inequalities and injustices with which they regard themselves to have been saddled by the treaties which ended the World War. Equilibrium is still not within our grasp. The list of disturbing factors might be continued, and I

shall not quarrel with people who allow their attention to be engrossed in this phase of our present outlook. I have not undertaken to say that the peace will be maintained; I have only tried to examine the methods by which a will to peace, if it exists, can be effectuated.

Yet I am not one of those people who insist upon judging the utility of every proposed measure by stressing its possible weakness in the most unfavorable of the improbable situations in which it may be tested. Such an attitude would at once undermine my faith in the Constitution of the United States, for I can easily imagine improbable situations in which our Constitution might be hopelessly inadequate. Nor can I be content to think that my own country, my own Government, has a monopoly on good faith. Unless I can assume the good faith of other peoples as well as my own, my approach to international problems will be warped. Weighing probabilities, giving peoples generally the credit of being both honest and sincere in their professions of a willingness to keep the peace, but mindful at the same time of the hazards which are sure to present themselves, what am I to say of the importance of the existing implementation of the Briand-Kellogg Pact?

Without confusing aspiration and achievement, I believe I can say that the world is today better prepared than it has ever been before, for the pacific settlement of international disputes and for the maintenance of the world's peace. If nations will resort to violence, if the forces of unreason will be allowed to prevail, it will not be because methods and agencies are unavailable for escape from such a course. The improvement of these methods and the creation of these agencies are among

the great achievements of our generation. The new principle is that a serious dispute is not the affair of the disputants alone, that it is a matter of general concern. We have proceeded on the theory that good will, though essential, is not enough. The League of Nations and the World Court exist today. They have already come through trial by fire, not without scars perhaps but intact nonetheless. They have been proved to have a vitality which augurs well for their continuance as the instruments of a collective system of pacific settlement, and their support throughout the world has given them a prestige which disaffection may have diminished but has not destroyed. The Geneva General Act of 1928 is a codification of this collective system, and it is supplemented by several hundreds of special treaties which bear few traces of pre-war influence. The American Republics, some of which participate in maintaining this collective system, have developed a separate system for settling inter-American disputes along lines not previously forged, and it may now be supplemented by the Saavedra-Lamas Treaty. This profusion of instruments of pacific settlement constitutes a preparation for maintaining the world's peace which can only be appreciated when we compare it with the feeble measures which were the goal of effort before 1914.

Of course it is a weakness of the system of pacific settlement, for the use of which the Briand-Kellogg Pact provides, that some of the more powerful States have not kept pace with its development. From time to time in the course of these lectures, I have referred to the part played by the United States of America in the history of recent effort. A popular impression prevails in

this country that the United States has been the great leader in this movement. One has only to read the debates in our Senate last January to appreciate the extent to which this impression is shared even by our statesmen. My observation has been that in many, if not most, countries of the world the people place a similar estimate on the value of their own contributions to world order. Americans have no monopoly on self-emulation. It is an attitude into which national pride slips very easily. Yet it might serve a useful purpose if each people would occasionally take stock of its own position, and if without any diminution of its self-respect it would bring itself to face the facts as they are. Let me therefore take a moment to inquire into the part which the United States has played, not with any desire to find fault with our own country, but for the purpose of glimpsing the course which we may follow in the future.

The history of our federal union ought to have qualified the United States for a leadership in international organization. With one great exception, we have been most successful in reconciling the interests of a large number of communities, and from the very beginning we have maintained agencies for this purpose. The record of the United States during the nineteenth century contained some conspicuous instances in which we joined with other countries to carry through successful arbitrations; the *Alabama Claims Arbitration* is a striking example. Yet there were also numerous occasions on which the United States refused offers of arbitration by other States. In the conclusion of arbitration treaties, we were certainly not in the vanguard of the nations during the nineteenth century. While it is commonly be-

lieved in this country that our representatives led the discussions of pacific settlement at the Hague Conferences, the official records of the debates do not go far in sustaining this impression; the American delegations were by no means the best prepared, and their proposals were seldom made the basis of discussion. At the 1907 Conference, the record of our delegation was perhaps more creditable than at the Conference of 1899. Following the creation of the Permanent Court of Arbitration, we joined with Mexico in setting up the first tribunal organized within its framework,[1] and with Great Britain we can claim the credit for the *North Atlantic Fisheries Arbitration.* We did not take the leadership in the conclusion of arbitration treaties based on the Hague Conventions, however, for we were crippled by the perennial competition between our Senate and Executive for control of our international relations.[2] Mr. Bryan as Secretary of State made a distinct contribution in the plan of conciliation which he proposed in 1913, and it furnished the germ of an extensive post-war development.

The termination of the World War found the United States in a commanding position. President Wilson may have contributed few ideas to the drafting of the Covenant of the League of Nations, but his urging and the in-

[1] The employment of a tribunal of the Permanent Court of Arbitration for the *Pious Fund Case* was suggested by Mexico, though the United States had previously proposed that the dispute be arbitrated.

[2] Our Senate has insisted upon making all references to arbitration subject to its "advice and consent" by two-thirds vote. President Taft concluded that "the narrow view that the Senate has taken in this matter . . . precludes all useful treaties of arbitration in advance of the occurrence of the quarrel to be arbitrated." Taft, *The Presidency* (1916), p. 104. For a list of forty references to arbitration made by the President without action by the Senate, see 79 *Congressional Record* (1935), pp. 980–982.

sistence of the American people led other peoples to accept the Covenant as an essential feature of post-war order. Yet the United States assumed no responsibility for translating the paper scheme of the Covenant into the living institutions which now serve as the chief bulwark of the world's peace. Today we coöperate with many activities of the League of Nations, we register our treaties at Geneva, under President Roosevelt's leadership we have assumed membership in the International Labor Organization; yet we steer clear of any of the Covenant's commitments to peace, and we give little encouragement to the observance of those commitments by other States. Such measures as acceptance of the "optional clause" and accession to the Geneva General Act have hardly been mooted in this country. We have even denied to ourselves any responsibility for maintaining the World Court, to the establishment of which one eminent American, Mr. Elihu Root, contributed many ideas, and upon the necessity for which our leaders have preached continuously for fifty years.

Nor can we be very proud of our existing system of conciliation and arbitration treaties. They constitute some improvement on pre-1914 standards, but they are rooted in pre-1914 ideas. None of our arbitration treaties, not even those with other American Republics, can be said to be advanced. If we have recently succeeded in avoiding acute situations with other States, one of the most powerful countries in the world has not set much example for States less favorably situated. One might say that we have been content to continue to ride in a wheelbarrow which a procession of high-powered automobiles has left far in the rear.

Yet it was the Secretary of State of the United States who proposed the conclusion of the Treaty for the Renunciation of War as a worldwide undertaking, and it was an aspiration of the American people which enabled insistence on that proposal to be pushed through to acceptance. In general, in principle, in the abstract, we favor peace, and we like to proclaim this attitude from every convenient housetop. Like other peoples, we never conceive of ourselves as possible disturbers of the peace. When it comes to creating agencies which may be used to encourage the maintenance of peace, when it is a question of committing ourselves to a course of action, when we are asked to implement the Briand-Kellogg Pact, we hold back, we engage in long debates, and in the end we take refuge in "traditional policies," professed rather than actual, which were handed down to us from the Napoleonic era.

THE task of preparing for peace can never be accomplished finally and for all time, and I repeat that the great advances which we have made in fifteen years are not an absolute guaranty of peace in years to come. Yet this can be said. With the methods and agencies now available, unless emotion gains the upper hand completely, intelligence, imagination, and ingenuity can now have a scope such as they have not had in any previous period of the world's history.

APPENDIX I

CONVENTION FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES, THE HAGUE, OCTOBER 18, 1907.[1]

PART I. THE MAINTENANCE OF GENERAL PEACE.

Article 1. With a view to obviating as far as possible recourse to force in the relations between States, the Contracting Powers agree to use their best efforts to ensure the pacific settlement of international differences.

PART II. GOOD OFFICES AND MEDIATION.

Art. 2. In case of serious disagreement or dispute, before an appeal to arms, the Contracting Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

Art. 3. Independently of this recourse, the Contracting Powers deem it expedient and desirable that one or more Powers, strangers to the dispute, should, on their own initiative and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers strangers to the dispute have the right to offer good offices or mediation even during the course of hostilities.

The exercise of this right can never be regarded by either of the parties in dispute as an unfriendly act.

Art. 4. The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

Art. 5. The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

Art. 6. Good offices and mediation undertaken either at the request of the parties in dispute or on the initiative of Powers stran-

[1] Translation from 2 Malloy, *Treaties of the United States*, p. 2220. The original is in French. The preamble is omitted.

gers to the dispute have exclusively the character of advice, and never have binding force.

Art. 7. The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If it takes place after the commencement of hostilities, the military operations in progress are not interrupted in the absence of an agreement to the contrary.

Art. 8. The Contracting Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:—

In case of a serious difference endangering peace, the States at variance choose respectively a Power, to which they intrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in dispute cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, which must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

Part III. International Commissions of Inquiry.

Art. 9. In disputes of an international nature involving neither honour nor vital interests, and arising from a difference of opinion on points of fact, the Contracting Powers deem it expedient and desirable that the parties who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an International Commission of Inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

Art. 10. International Commissions of Inquiry are constituted by special agreement between the parties in dispute.

The Inquiry Convention defines the facts to be examined; it determines the mode and time in which the Commission is to be formed and the extent of the powers of the Commissioners.

It also determines, if there is need, where the Commission is to

sit, and whether it may remove to another place, the language the Commission shall use and the languages the use of which shall be authorized before it, as well as the date on which each party must deposit its statement of facts, and, generally speaking, all the conditions upon which the parties have agreed.

If the parties consider it necessary to appoint Assessors, the Convention of Inquiry shall determine the mode of their selection and the extent of their powers.

Art. 11. If the Inquiry Convention has not determined where the Commission is to sit, it will sit at The Hague.

The place of meeting, once fixed, cannot be altered by the Commission except with the assent of the parties.

If the Inquiry Convention has not determined what languages are to be employed, the question shall be decided by the Commission.

Art. 12. Unless an undertaking is made to the contrary, Commissions of Inquiry shall be formed in the manner determined by Articles 45 and 57 of the present Convention.

Art. 13. Should one of the Commissioners or one of the Assessors, should there be any, either die, or resign, or be unable for any reason whatever to discharge his functions, the same procedure is followed for filling the vacancy as was followed for appointing him.

Art. 14. The parties are entitled to appoint special agents to attend the Commission of Inquiry, whose duty it is to represent them and to act as intermediaries between them and the Commission.

They are further authorized to engage counsel or advocates, appointed by themselves, to state their case and uphold their interests before the Commission.

Art. 15. The International Bureau of the Permanent Court of Arbitration acts as registry for the Commissions which sit at The Hague, and shall place its offices and staff at the disposal of the Contracting Powers for the use of the Commission of Inquiry.

Art. 16. If the Commission meets elsewhere than at The Hague, it appoints a Secretary-General, whose office serves as registry.

It is the function of the registry, under the control of the President, to make the necessary arrangements for the sittings of the Commission, the preparation of the Minutes, and, while the inquiry lasts, for the charge of the archives, which shall subsequently be transferred to the International Bureau at The Hague.

Art. 17. In order to facilitate the constitution and working of Commissions of Inquiry, the Contracting Powers recommend the following rules, which shall be applicable to the inquiry procedure in so far as the parties do not adopt other rules.

Art. 18. The Commission shall settle the details of the procedure not covered by the special Inquiry Convention or the present Convention, and shall arrange all the formalities required for dealing with the evidence.

Art. 19. On the inquiry both sides must be heard.

At the dates fixed, each party communicates to the Commission and to the other party the statements of facts, if any, and, in all cases, the instruments, papers, and documents which it considers useful for ascertaining the truth, as well as the list of witnesses and experts whose evidence it wishes to be heard.

Art. 20. The Commission is entitled, with the assent of the Powers, to move temporarily to any place where it considers it may be useful to have recourse to this means of inquiry or to send one or more of its members. Permission must be obtained from the State on whose territory it is proposed to hold the inquiry.

Art. 21. Every investigation, and every examination of a locality, must be made in the presence of the agents and counsel of the parties or after they have been duly summoned.

Art. 22. The Commission is entitled to ask from either party for such explanations and information as it considers necessary.

Art. 23. The parties undertake to supply the Commission of Inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with, and to accurately understand, the facts in question.

They undertake to make use of the means at their disposal, under their municipal law, to insure the appearance of the witnesses or experts who are in their territory and have been summoned before the Commission.

If the witnesses or experts are unable to appear before the Commission, the parties will arrange for their evidence to be taken before the qualified officials of their own country.

Art. 24. For all notices to be served by the Commission in the territory of a third Contracting Power, the Commission shall apply direct to the Government of the said Power. The same rule applies in the case of steps being taken on the spot to procure evidence.

The requests for this purpose are to be executed so far as the

means at the disposal of the Power applied to under its municipal law allow. They cannot be rejected unless the Power in question considers they are calculated to impair its sovereign rights or its safety.

The Commission will equally be always entitled to act through the Power on whose territory it sits.

Art. 25. The witnesses and experts are summoned on the request of the parties or by the Commission of its own motion, and, in every case, through the Government of the State in whose territory they are.

The witnesses are heard in succession and separately, in the presence of the agents and counsel, and in the order fixed by the Commission.

Art. 26. The examination of witnesses is conducted by the President.

The members of the Commission may however put to each witness questions which they consider likely to throw light on and complete his evidence, or get information on any point concerning the witness within the limits of what is necessary in order to get at the truth.

The agents and counsel of the parties may not interrupt the witness when he is making his statement, nor put any direct question to him, but they may ask the President to put such additional questions to the witness as they think expedient.

Art. 27. The witness must give his evidence without being allowed to read any written draft. He may, however, be permitted by the President to consult notes or documents if the nature of the facts referred to necessitates their employment.

Art. 28. A Minute of the evidence of the witness is drawn up forthwith and read to the witness. The latter may make such alterations and additions as he thinks necessary, which will be recorded at the end of his statement.

When the whole of his statement has been read to the witness, he is asked to sign it.

Art. 29. The agents are authorized, in the course of or at the close of the inquiry, to present in writing to the Commission and to the other party such statements, requisitions, or summaries of the facts as they consider useful for ascertaining the truth.

Art. 30. The Commission considers its decisions in private and the proceedings are secret.

All questions are decided by a majority of the members of the Commission.

If a member declines to vote, the fact must be recorded in the Minutes.

Art. 31. The sittings of the Commission are not public, nor the Minutes and documents connected with the inquiry published except in virtue of a decision of the Commission taken with the consent of the parties.

Art. 32. After the parties have presented all the explanations and evidence, and the witnesses have all been heard, the President declares the inquiry terminated, and the Commission adjourns to deliberate and to draw up its Report.

Art. 33. The Report is signed by all the members of the Commission.

If one of the members refuses to sign, the fact is mentioned; but the validity of the Report is not affected.

Art. 34. The Report of the Commission is read at a public sitting, the agents and counsel of the parties being present or duly summoned.

A copy of the Report is given to each party.

Art. 35. The Report of the Commission is limited to a statement of facts, and has in no way the character of an Award. It leaves to the parties entire freedom as to the effect to be given to the statement.

Art. 36. Each party pays its own expenses and an equal share of the expenses incurred by the Commission.

Part IV. International Arbitration.

Chapter I. The System of Arbitration.

Art. 37. International arbitration has for its object the settlement of disputes between States by Judges of their own choice and on the basis of respect for law.

Recourse to arbitration implies an engagement to submit in good faith to the Award.

Art. 38. In questions of a legal nature, and especially in the interpretation or application of International Conventions, arbitration is recognized by the Contracting Powers as the most effective, and, at the same time, the most equitable means of settling disputes which diplomacy has failed to settle.

Consequently, it would be desirable that, in disputes about the

above-mentioned questions, the Contracting Powers should, if the case arose, have recourse to arbitration, in so far as circumstances permit.

Art. 39. The Arbitration Convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

Art. 40. Independently of general or private Treaties expressly stipulating recourse to arbitration as obligatory on the Contracting Powers, the said Powers reserve to themselves the right of concluding new Agreements, general or particular, with a view to extending compulsory arbitration to all cases which they may consider it possible to submit to it.

Chapter II. The Permanent Court of Arbitration.

Art. 41. With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the Contracting Powers undertake to maintain the Permanent Court of Arbitration, as established by the First Peace Conference, accessible at all times, and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention.

Art. 42. The Permanent Court is competent for all arbitration cases, unless the parties agree to institute a special Tribunal.

Art. 43. The Permanent Court sits at The Hague.

An International Bureau serves as registry for the Court. It is the channel for communications relative to the meetings of the Court; it has charge of the archives and conducts all the administrative business.

The Contracting Powers undertake to communicate to the Bureau, as soon as possible, a certified copy of any conditions of arbitration arrived at between them and of any Award concerning them delivered by a special Tribunal.

They likewise undertake to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the Awards given by the Court.

Art. 44. Each Contracting Power selects four persons at most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of Arbitrator.

The persons thus selected are inscribed, as members of the Court, in a list which shall be notified to all the Contracting Powers by the Bureau.[2]

Any alteration in the list of Arbitrators is brought by the Bureau to the knowledge of the Contracting Powers.

Two or more Powers may agree on the selection in common of one or more members.

The same person can be selected by different Powers. The members of the Court are appointed for a term of six years. These appointments are renewable.

Should a member of the Court die or resign, the same procedure is followed for filling the vacancy as was followed for appointing him. In this case the appointment is made for a fresh period of six years.

Art. 45. When the Contracting Powers wish to have recourse to the Permanent Court for the settlement of a difference which has arisen between them, the Arbitrators called upon to form the Tribunal with jurisdiction to decide this difference must be chosen from the general list of members of the Court.

Failing the direct agreement of the parties on the composition of the Arbitration Tribunal, the following course shall be pursued:—

Each party appoints two Arbitrators, of whom one only can be its national or chosen from among the persons selected by it as members of the Permanent Court. These Arbitrators together oose an Umpire.

f the votes are equally divided, the choice of the Umpire is sted to a third Power, selected by the parties by common d.

agreement is not arrived at on this subject each party se- ifferent Power, and the choice of the Umpire is made in Art. 37 the Powers thus selected.

ment of di in two months' time, these two Powers cannot come to on the basis

Recourse t, each of them presents two candidates taken from good faith to embers of the Permanent Court, exclusive of the ted by the parties and not being nationals of either

Art. 38. In ing lots determines which of the candidates thus interpretation o e Umpire.

tration is recogni ibunal being thus composed, the parties notify tive, and, at the s

disputes which dipl d by the Bureau on April 1, 1935, contains the Consequently, it w D.

to the Bureau their determination to have recourse to the Court, the text of their *compromis*, and the names of the Arbitrators.

The Bureau communicates without delay to each Arbitrator the *compromis*, and the names of the other members of the Tribunal.

The Tribunal assembles at the date fixed by the parties. The Bureau makes the necessary arrangements for the meeting.

The members of the Tribunal, in the exercise of their duties and out of their own country, enjoy diplomatic privileges and immunities.

Art. 47. The Bureau is authorized to place its offices and staff at the disposal of the Contracting Powers for the use of any special Board of Arbitration.

The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-Contracting Powers or between Contracting Powers and non-Contracting Powers, if the parties are agreed on recourse to this Tribunal.

Art. 48. The Contracting Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as friendly actions.

In case of dispute between two Powers, one of them can always address to the International Bureau a note containing a declaration that it would be ready to submit the dispute to arbitration.

The Bureau must at once inform the other Power of the declaration.

Art. 49. The Permanent Administrative Council, composed of the Diplomatic Representatives of the Contracting Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs, who will act as President, is charged with the direction and control of the International Bureau.

The Council settles its rules of procedure and all other necessary regulations.

It decides all questions of administration which may arise with regard to the operations of the Court.

It has entire control over the appointment, suspension, or dismissal of the officials and employés of the Bureau.

It fixes the payments and salaries, and controls the general expenditure.

At meetings duly summoned the presence of nine members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the Contracting Powers without delay the regulations adopted by it. It furnishes them with an annual Report on the labours of the Court, the working of the administration, and the expenditure. The Report likewise contains a résumé of what is important in the documents communicated to the Bureau by the Powers in virtue of Article 43, paragraphs 3 and 4.

Art. 50. The expenses of the Bureau shall be borne by the Contracting Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

The expenses to be charged to the adhering Powers shall be reckoned from the date on which their adhesion comes into force.

Chapter III. Arbitration Procedure.

Art. 51. With a view to encouraging the development of arbitration, the Contracting Powers have agreed on the following rules, which are applicable to arbitration procedure, unless other rules have been agreed on by the parties.

Art. 52. The Powers which have recourse to arbitration sign a *compromis*, in which the subject of the dispute is clearly defined, the time allowed for appointing Arbitrators, the form, order, and time in which the communication referred to in Article 63 must be made, and the amount of the sum which each party must deposit in advance to defray the expenses.

The *compromis* likewise defines, if there is occasion, the manner of appointing Arbitrators, any special powers which may eventually belong to the Tribunal, where it shall meet, the language it shall use, and the languages the employment of which shall be authorized before it, and, generally speaking, all the conditions on which the parties are agreed.

Art. 53. The Permanent Court is competent to settle the *compromis*, if the parties are agreed to have recourse to it for the purpose.

It is similarly competent, even if the request is only made by one of the parties, when all attempts to reach an understanding through the diplomatic channel have failed, in the case of:—

1. A dispute covered by a general Treaty of Arbitration concluded or renewed after the present Convention has come into force, and providing for a *compromis* in all disputes and not either explicitly or implicitly excluding the settlement of the *compromis* from the competence of the Court. Recourse cannot, however, be had to the Court if the other party declares that in its opinion the dispute does not belong to the category of disputes which can be submitted to compulsory arbitration, unless the Treaty of Arbitration confers upon the Arbitration Tribunal the power of deciding this preliminary question.

2. A dispute arising from contract debts claimed from one Power by another Power as due to its nationals, and for the settlement of which the offer of arbitration has been accepted. This arrangement is not applicable if acceptance is subject to the condition that the *compromis* should be settled in some other way.

Art. 54. In the cases contemplated in the preceding Article, the *compromis* shall be settled by a Commission consisting of five members selected in the manner arranged for in Article 45, paragraphs 3 to 6.

The fifth member is President of the Commission *ex officio*.

Art. 55. The duties of Arbitrator may be conferred on one Arbitrator alone or on several Arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present Convention.

Failing the constitution of the Tribunal by direct agreement between the parties, the course referred to in Article 45, paragraphs 3 to 6, is followed.

Art. 56. When a Sovereign or the Chief of a State is chosen as Arbitrator, the arbitration procedure is settled by him.

Art. 57. The Umpire is President of the Tribunal *ex officio*.

When the Tribunal does not include an Umpire, it appoints its own President.

Art. 58. When the *compromis* is settled by a Commission, as contemplated in Article 54, and in the absence of an agreement to the contrary, the Commission itself shall form the Arbitration Tribunal.

Art. 59. Should one of the Arbitrators either die, retire, or be

unable for any reason whatever to discharge his functions, the same procedure is followed for filling the vacancy as was followed for appointing him.

Art. 60. The Tribunal sits at The Hague, unless some other place is selected by the parties.

The Tribunal can only sit in the territory of a third Power with the latter's consent.

The place of meeting once fixed cannot be altered by the Tribunal, except with the consent of the parties.

Art. 61. If the question as to what languages are to be used has not been settled by the *compromis,* it shall be decided by the Tribunal.

Art. 62. The parties are entitled to appoint special agents to attend the Tribunal to act as intermediaries between themselves and the Tribunal.

They are further authorized to retain for the defence of their rights and interests before the Tribunal counsel or advocates appointed by themselves for this purpose.

The members of the Permanent Court may not act as agents, counsel, or advocates except on behalf of the Power which appointed them members of the Court.

Art. 63. As a general rule, arbitration procedure comprises two distinct phases: pleadings and oral discussions.

The pleadings consist in the communication by the respective agents to the members of the Tribunal and the opposite party of cases, counter-cases, and, if necessary, of replies; the parties annex thereto all papers and documents called for in the case. This communication shall be made either directly or through the intermediary of the International Bureau, in the order and within the time fixed by the *compromis.*

The time fixed by the *compromis* may be extended by mutual agreement by the parties, or by the Tribunal when the latter considers it necessary for the purpose of reaching a just decision.

The discussions consist in the oral development before the Tribunal of the arguments of the parties.

Art. 64. A certified copy of every document produced by one party must be communicated to the other party.

Art. 65. Unless special circumstances arise, the Tribunal does not meet until the pleadings are closed.

Art. 66. The discussions are under the control of the President.

They are only public if it be so decided by the Tribunal, with the assent of the parties.

They are recorded in minutes drawn up by the Secretaries appointed by the President. These minutes are signed by the President and by one of the Secretaries and alone have an authentic character.

Art. 67. After the close of the pleadings, the Tribunal is entitled to refuse discussion of all new papers or documents which one of the parties may wish to submit to it without the consent of the other party.

Art. 68. The Tribunal is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the Tribunal has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

Art. 69. The Tribunal can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal the Tribunal takes note of it.

Art. 70. The agents and the counsel of the parties are authorized to present orally to the Tribunal all the arguments they may consider expedient in defence of their case.

Art. 71. They are entitled to raise objections and points. The decisions of the Tribunal on these points are final and cannot form the subject of any subsequent discussion.

Art. 72. The members of the Tribunal are entitled to put questions to the agents and counsel of the parties, and to ask them for explanations on doubtful points.

Neither the questions put, nor the remarks made by members of the Tribunal in the course of the discussions, can be regarded as an expression of opinion by the Tribunal in general or by its members in particular.

Art. 73. The Tribunal is authorized to declare its competence in interpreting the *compromis*, as well as the other Treaties which may be invoked, and in applying the principles of law.

Art. 74. The Tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms, order, and time in which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

Art. 75. The parties undertake to supply the Tribunal, as fully

as they consider possible, with all the information required for deciding the case.

Art. 76. For all notices which the Tribunal has to serve in the territory of a third Contracting Power, the Tribunal shall apply direct to the Government of that Power. The same rule applies in the case of steps being taken to procure evidence on the spot.

The requests for this purpose are to be executed as far as the means at the disposal of the Power applied to under its municipal law allow. They cannot be rejected unless the Power in question considers them calculated to impair its own sovereign rights or its safety.

The Court will equally be always entitled to act through the Power on whose territory it sits.

Art. 77. When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case the President shall declare the discussion closed.

Art. 78. The Tribunal considers its decisions in private and the proceedings remain secret.

All questions are decided by a majority of the members of the Tribunal.

Art. 79. The Award must give the reasons on which it is based. It contains the names of the Arbitrators; it is signed by the President and Registrar or by the Secretary acting as Registrar.

Art. 80. The Award is read out in public sitting, the agents and counsel of the parties being present or duly summoned to attend.

Art. 81. The Award, duly pronounced and notified to the agents of the parties, settles the dispute definitively and without appeal.

Art. 82. Any dispute arising between the parties as to the interpretation and execution of the Award shall, in the absence of an Agreement to the contrary, be submitted to the Tribunal which pronounced it.

Art. 83. The parties can reserve in the *compromis* the right to demand the revision of the Award.

In this case and unless there be an Agreement to the contrary, the demand must be addressed to the Tribunal which pronounced the Award. It can only be made on the ground of the discovery of some new fact calculated to exercise a decisive influence upon the Award and which was unknown to the Tribunal and to the party which demanded the revision at the time the discussion was closed.

Proceedings for revision can only be instituted by a decision of the Tribunal expressly recording the existence of the new fact,

recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.

The *compromis* fixes the period within which the demand for revision must be made.

Art. 84. The Award is not binding except on the parties in dispute.

When it concerns the interpretation of a Convention to which Powers other than those in dispute are parties, they shall inform all the Signatory Powers in good time. Each of these Powers is entitled to intervene in the case. If one or more avail themselves of this right, the interpretation contained in the Award is equally binding on them.

Art. 85. Each party pays its own expenses and an equal share of the expenses of the Tribunal.

Chapter IV. Arbitration by Summary Procedure.

Art. 86. With a view to facilitating the working of the system of arbitration in disputes admitting of a summary procedure, the Contracting Powers adopt the following rules, which shall be observed in the absence of other arrangements and subject to the reservation that the provisions of Chapter III apply so far as may be.

Art. 87. Each of the parties in dispute appoints an Arbitrator. The two Arbitrators thus selected choose an Umpire. If they do not agree on this point, each of them proposes two candidates taken from the general list of the members of the Permanent Court exclusive of the members appointed by either of the parties and not being nationals of either of them; which of the candidates thus proposed shall be the Umpire is determined by lot.

The Umpire presides over the Tribunal, which gives its decisions by a majority of votes.

Art. 88. In the absence of any previous agreement the Tribunal, as soon as it is formed, settles the time within which the two parties must submit their respective cases to it.

Art. 89. Each party is represented before the Tribunal by an agent, who serves as intermediary between the Tribunal and the Government who appointed him.

Art. 90. The proceedings are conducted exclusively in writing. Each party, however, is entitled to ask that witnesses and experts should be called. The Tribunal has, for its part, the right to demand oral explanations from the agents of the two parties, as well

as from the experts and witnesses whose appearance in Court it may consider useful.

PART V. FINAL PROVISIONS.

Art. 91. The present Convention, duly ratified, shall replace, as between the Contracting Powers, the Convention for the Pacific Settlement of International Disputes of the 29th July, 1899.

Art. 92. The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to those Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph, the said Government shall at the same time inform the Powers of the date on which it received the notification.

Art. 93. Non-Signatory Powers which have been invited to the Second Peace Conference may adhere to the present Convention.

The Power which desires to adhere notifies its intention in writing to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

This Government shall immediately forward to all the other Powers invited to the Second Peace Conference a duly certified copy of the notification as well as of the act of adhesion, mentioning the date on which it received the notification.

Art. 94. The conditions on which the Powers which have not been invited to the Second Peace Conference may adhere to the Present Convention shall form the subject of a subsequent Agreement between the Contracting Powers.

Art. 95. The present Convention shall take effect, in the case

of the Powers which were not a party to the first deposit of ratifications, sixty days after the date of the *procès-verbal* of this deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

Art. 96. In the event of one of the Contracting Parties wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers informing them of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

Art. 97. A register kept by the Netherland Minister for Foreign Affairs shall give the date of the deposit of ratifications effected in virtue of Article 92, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 93, paragraph 2) or of denunciation (Article 96, paragraph 1) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single copy, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Contracting Powers.

[Signatures omitted.]

Parties to the Hague Conventions for Pacific Settlement[3]

(April 1, 1935)

United States of America
Argentine Republic
Belgium
Boliva
Brazil
Bulgaria
Chile
China
Colombia
Cuba
Czechoslovakia
Denmark
Dominican Republic
Ecuador
Finland
France
Germany
Great Britain
Greece
Guatemala
Haiti
Hungary
Iran (Persia)
Italy
Japan
Luxemburg
Mexico
Netherlands
Nicaragua
Norway
Panama
Paraguay
Peru
Poland
Portugal
Rumania
El Salvador
Siam
Spain
Sweden
Switzerland
Turkey
Uruguay
Venezuela
Yugoslavia

Total: 45

[3] Either to the Convention of October 18, 1907, or to the earlier Convention of July 29, 1899.

APPENDIX II

COVENANT OF THE LEAGUE OF NATIONS, JUNE 28, 1919.[1]

THE HIGH CONTRACTING PARTIES,

In order to promote international co-operation and to achieve international peace and security

by the acceptance of obligations not to resort to war,

by the prescription of open, just and honourable relations between nations,

by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and

by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another,

Agree to this Covenant of the League of Nations.

Article 1.—1.[2] The original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

2. Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments.

3. Any Member of the League may, after two years' notice of

[1] English version as published by the Secretariat of the League of Nations. The French version is also authoritative.

[2] The paragraphs are numbered in accordance with the Assembly resolution of September 21, 1926. See *League of Nations Official Journal*, Special Supplement No. 43, p. 10.—ED.

its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

Art. 2. The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

Art. 3.—1. The Assembly shall consist of Representatives of the Members of the League.

2. The Assembly shall meet at stated intervals and from time to time as occasion may require at the Seat of the League or at such other place as may be decided upon.

3. The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

4. At meetings of the Assembly, each Member of the League shall have one vote, and may have not more than three Representatives.

Art. 4.—1. The Council shall consist of Representatives of the Principal Allied and Associated Powers,[3] together with Representatives of four other Members of the League. These four Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Spain and Greece shall be members of the Council.

2. With the approval of the majority of the Assembly, the Council may name additional Members of the League whose Representatives shall always be members of the Council;[4] the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.[5]

[3] The Principal Allied and Associated Powers are named in the Treaty of Versailles as the following: The United States of America, the British Empire, France, Italy and Japan. The Covenant has not been ratified by the United States of America.—Ed.

[4] In virtue of this paragraph of the Covenant, Germany was nominated to have a permanent representative on the Council, on September 8, 1926, and the Union of Soviet Socialist Republics on September 18, 1934.—Ed.

[5] The number of Members of the League to be selected by the Assembly was increased to six in 1922, and to nine in 1926. In 1933 a tenth Member of the League was selected by the Fourteenth Assembly

3.[6] The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon.

4. The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

5. Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.

6. At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one Representative.

Art. 5.—1. Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

2. All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting.

3. The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

Art. 6.—1. The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary General and such secretaries and staff as may be required.

2. The first Secretary General shall be the person named in the Annex; thereafter the Secretary General shall be appointed by the Council with the approval of the majority of the Assembly.

3. The secretaries and staff of the Secretariat shall be appointed by the Secretary General with the approval of the Council.

for provisional representation on the Council for a period of three years. *Records of the Fourteenth Assembly, Plenary Meetings*, p. 78.—Ed.

[6] By an amendment which came into force on July 29, 1926, the following paragraph was inserted between the second and third paragraphs of Article 4: "The Assembly shall fix by a two-thirds majority the rules dealing with the election of the non-permanent members of the Council, and particularly such regulations as relate to their term of office and the conditions of re-eligibility."—Ed.

4. The Secretary General shall act in that capacity at all meetings of the Assembly and of the Council.

5.[7] The expenses of the Secretariat shall be borne by the Members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

Art. 7.—1. The Seat of the League is established at Geneva.

2. The Council may at any time decide that the Seat of the League shall be established elsewhere.

3. All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.

4. Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

5. The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

Art. 8.—1. The Members of the League recognise that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

2. The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments.

3. Such plans shall be subject to reconsideration and revision at least every ten years.

4. After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.

5. The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

[7] By an amendment which came into force on August 13, 1924, paragraph 5 was replaced by the following paragraph: "The expenses of the League shall be borne by the Members of the League in the proportion decided by the Assembly."—Ed.

6. The Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval and air programmes and the condition of such of their industries as are adaptable to war-like purposes.

Art. 9. A permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8 and on military, naval and air questions generally.

Art. 10. The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

Art. 11.—1. Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary General shall on the request of any Member of the League forthwith summon a meeting of the Council.

2. It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

Art. 12.—1. The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration[8] or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators[9] or the report by the Council.

2. In any case under this Article the award of the arbitrators[9] shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

Art. 13.—1. The Members of the League agree that whenever any dispute shall arise between them which they recognise to be

[8] By an amendment which came into force on September 26, 1924, the words "or judicial settlement" were added.—Ed.

[9] By an amendment which came into force on September 26, 1924, the following words were added: "or the judicial decision."—Ed.

suitable for submission to arbitration[10] and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration.[10]

2. Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration.[10]

3.[11] For the consideration of any such dispute, the court of arbitration to which the case is referred shall be the court agreed on by the parties to the dispute or stipulated in any convention existing between them.

4. The Members of the League agree that they will carry out in full good faith any award[12] that may be rendered and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award[12] the Council shall propose what steps should be taken to give effect thereto.

Art. 14. The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

Art. 15.—1. If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration[13] in accordance with Article 13, the Members of the League agree that they will submit the matter to the

[10] By an amendment which came into force on September 26, 1924, the following words were added: "or judicial settlement."—Ed.

[11] By an amendment which came into force on September 26, 1924, paragraph 3 was changed to read as follows: "For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them."—Ed.

[12] By an amendment which came into force on September 26, 1924, the words "or decision" were added.—Ed.

[13] By an amendment which came into force on September 26, 1924, the words "or judicial settlement" were added.—Ed.

Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary General, who will make all necessary arrangements for a full investigation and consideration thereof.

2. For this purpose the parties to the dispute will communicate to the Secretary General, as promptly as possible, statements of their case with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

3. The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

4. If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

5. Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

6. If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

7. If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

8. If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

9. The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council.

10. In any case referred to the Assembly, all the provisions of

this Article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

Art. 16.—1. Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

2. It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

3. The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

4. Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

Art. 17.—1. In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not

Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council.

2. Upon such invitation being given the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

3. If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.

4. If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

Art. 18. Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.

Art. 19. The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.

Art. 20.—1. The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

2. In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations.

Art. 21. Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitra-

tion or regional understandings like the Monroe doctrine, for securing the maintenance of peace.

Art. 22.—1. To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

2. The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

3. The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

4. Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

5. Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

6. There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the

centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

7. In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

8. The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

9. A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

Art. 23. Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

(*a*) will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organisations;

(*b*) undertake to secure just treatment of the native inhabitants of territories under their control;

(*c*) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs;

(*d*) will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;

(*e*) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914–1918 shall be borne in mind;

(*f*) will endeavour to take steps in matters of international concern for the prevention and control of disease.

Art. 24.—1. There shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

2. In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaux or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

3. The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

Art. 25. The Members of the League agree to encourage and promote the establishment and co-operation of duly authorised voluntary national Red Cross organisations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.

Art. 26.—1. Amendments to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly.

2. No such amendments shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.

ANNEX

I. Original Members of the League of Nations Signatories of the Treaty of Peace[14]

United States of America
Belgium
Bolivia
Brazil
British Empire
Canada
Australia
South Africa
New Zealand
India
China
Cuba
Ecuador
France

[14] All of the States listed, except the United States of America and the Hedjaz (now Saudi Arabia) have become members.—Ed.

Greece
Guatemala
Haiti
Hedjaz
Honduras
Italy
Japan
Liberia
Nicaragua
Panama
Peru
Poland
Portugal
Roumania
Serb-Croat-Slovene State
Siam
Czecho-Slovakia
Uruguay

STATES INVITED TO ACCEDE TO THE COVENANT[15]

Argentine Republic
Chile
Colombia
Denmark
Netherlands
Norway
Paraguay
Persia
Salvador
Spain
Sweden
Switzerland
Venezuela

II. FIRST SECRETARY GENERAL OF THE LEAGUE OF NATIONS

The Honourable Sir James Eric Drummond, K.C.M.G., C.B.[16]

MEMBERS OF THE LEAGUE OF NATIONS[17]

(APRIL 1, 1935)

Abyssinia
Afghanistan
South Africa, Union of
Albania
Argentine Republic
Australia
Austria
Belgium
Bolivia
British Empire
Bulgaria
Canada
Chile
China
Colombia
Cuba
Czechoslovakia
Denmark
Dominican Republic
Ecuador
Estonia
Finland

[15] All of these States acceded.—ED.

[16] Sir Eric Drummond was succeeded by M. Joseph Avenol on July 1, 1933.—ED.

[17] For fuller information, see *British Year Book of International Law* (1935), pp. 130–152.

France
Germany[18]
Greece
Guatemala
Haiti
Honduras
Hungary
India
Iran (Persia)
Iraq
Irish Free State
Italy
Latvia
Liberia
Lithuania
Luxemburg
Mexico
Netherlands
New Zealand
Nicaragua
Norway
Panama
Paraguay[19]
Peru
Poland
Portugal
Rumania
El Salvador
Siam
Union of Soviet Socialist Republics
Spain
Sweden
Switzerland
Turkey
Uruguay
Venezuela
Yugoslavia

Total: 59

States not Members of the League of Nations

(April 1, 1935)

United States of America
Brazil
Costa Rica
Danzig, Free City of
Egypt
Iceland
Japan
Liechtenstein
Monaco
Nepal
San Marino
Saudi Arabia
Vatican City
Yemen

[18] On October 21, 1933, Germany gave notice of an intention to withdraw from membership.

[19] On February 22, 1935, Paraguay gave notice of an intention to withdraw from membership.

APPENDIX III

PROTOCOL OF SIGNATURE AND STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE, GENEVA, DECEMBER 16, 1920.[1]

PROTOCOL OF SIGNATURE, GENEVA, DECEMBER 16, 1920

The members of the League of Nations, through the undersigned, duly authorized, declare their acceptance of the adjoined Statute of the Permanent Court of International Justice, which was approved by a unanimous vote of the Assembly of the League on the 13th December, 1920, at Geneva.

Consequently, they hereby declare that they accept the jurisdiction of the Court in accordance with the terms and subject to the conditions of the above-mentioned Statute.

The present Protocol, which has been drawn up in accordance with the decision taken by the Assembly of the League of Nations on the 13th December, 1920, is subject to ratification. Each power shall send its ratification to the Secretary-General of the League of Nations; the latter shall take the necessary steps to notify such ratification to the other signatory powers. The ratification shall be deposited in the archives of the Secretariat of the League of Nations.

The said Protocol shall remain open for signature by the Members of the League of Nations and by the States mentioned in the Annex to the Covenant of the League.

The Statute of the Court shall come into force as provided in the above-mentioned decision.

Executed at Geneva, in a single copy, the French and English texts of which shall both be authentic.

December 16, 1920.

[Here follow the signatures of 55 States.]

[1] From 1 Hudson, *World Court Reports*, p. 16. The French version is also authoritative.

STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE, ANNEXED TO THE PROTOCOL OF SIGNATURE OF DECEMBER 16, 1920[2]

Article 1. A Permanent Court of International Justice is hereby established, in accordance with Article 14 of the Covenant of the League of Nations. This Court shall be in addition to the Court of Arbitration organized by the Conventions of The Hague of 1899 and 1907, and to the special Tribunals of Arbitration to which States are always at liberty to submit their disputes for settlement.

Chapter I. Organization of the Court

Art. 2. The Permanent Court of International Justice shall be composed of a body of independent judges elected regardless of their nationality from amongst persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

*Art. 3. The Court shall consist of fifteen members: eleven judges and four deputy-judges. The number of judges and deputy-judges may hereafter be increased by the Assembly, upon the proposal of the Council of the League of Nations, to a total of fifteen judges and six deputy-judges.[3]

*Art. 4. The members of the Court shall be elected by the Assembly and by the Council from a list of persons nominated by the national groups in the Court of Arbitration, in accordance with the following provisions.

In the case of Members of the League of Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the Pacific Settlement of International Disputes.

Art. 5. At least three months before the date of the election, the

[2] The articles marked with an asterisk are those which will be amended if the Protocol for the Revision of the Statute of September 14, 1929 comes into force. The French version of the Statute is also authoritative.

[3] On September 25, 1930, the Assembly of the League of Nations exercised the power conferred by Article 3, and increased the number of judges to fifteen.—ED.

Secretary-General of the League of Nations shall address a written request to the Members of the Court of Arbitration belonging to the States mentioned in the Annex to the Covenant or to the States which join the League subsequently, and to the persons appointed under paragraph 2 of Article 4, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case must the number of candidates nominated be more than double the number of seats to be filled.

Art. 6. Before making these nominations, each national group is recommended to consult its Highest Court of Justice, its Legal Faculties and Schools of Law, and its National Academies and national sections of International Academies devoted to the study of Law.

Art. 7. The Secretary-General of the League of Nations shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible for appointment.

The Secretary-General shall submit this list to the Assembly and to the Council.

*Art. 8. The Assembly and the Council shall proceed independently of one another to elect, firstly the judges, then the deputy-judges.

Art. 9. At every election, the electors shall bear in mind that not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilization and the principal legal systems of the world.

Art. 10. Those candidates who obtain an absolute majority of votes in the Assembly and in the Council shall be considered as elected.

In the event of more than one national of the same Member of the League being elected by the votes of both the Assembly and the Council, the eldest of these only shall be considered as elected.

Art. 11. If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

Art. 12. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three

appointed by the Assembly and three by the Council, may be formed, at any time, at the request of either the Assembly or the Council, for the purpose of choosing one name for each seat still vacant, to submit to the Assembly and the Council for their respective acceptance.

If the Conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Articles 4 and 5.

If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been appointed shall, within a period to be fixed by the Council, proceed to fill the vacant seats by selection from amongst those candidates who have obtained votes either in the Assembly or in the Council.

In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.

*Art. 13. The members of the Court shall be elected for nine years.

They may be re-elected.

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

*Art. 14. Vacancies which may occur shall be filled by the same method as that laid down for the first election. A member of the Court elected to replace a member whose period of appointment had not expired will hold the appointment for the remainder of his predecessor's term.

*Art. 15. Deputy-judges shall be called upon to sit in the order laid down in a list.

This list shall be prepared by the Court and shall have regard firstly to priority of election and secondly to age.

*Art. 16. The ordinary members of the Court may not exercise any political or administrative function. This provision does not apply to the deputy-judges except when performing their duties on the Court.

Any doubt on this point is settled by the decision of the Court.

*Art. 17. No member of the Court can act as agent, counsel or advocate in any case of an international nature. This provision only applies to the deputy-judges as regards cases in which they are called upon to exercise their functions on the Court.

No member may participate in the decision of any case in which he has previously taken an active part, as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international court, or of a commission of inquiry, or in any other capacity.

Any doubt on this point is settled by the decision of the Court.

Art. 18. A member of the Court can not be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

Formal notification thereof shall be made to the Secretary-General of the League of Nations, by the Registrar.

This notification makes the place vacant.

Art. 19. The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

Art. 20. Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

Art. 21. The Court shall elect its President and Vice-President for three years; they may be re-elected.

It shall appoint its Registrar.

The duties of Registrar of the Court shall not be deemed incompatible with those of Secretary-General of the Permanent Court of Arbitration.

Art. 22. The seat of the Court shall be established at The Hague.

The President and Registrar shall reside at the seat of the Court.

*Art. 23. A session of the Court shall be held every year.

Unless otherwise provided by Rules of Court, this session shall begin on the 15th of June,[4] and shall continue for so long as may be deemed necessary to finish the cases on the list.

The President may summon an extraordinary session of the Court whenever necessary.

Art. 24. If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

If the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

[4] Under Article 27 of the 1931 Rules of Court, the annual session begins on February 1 of each year.—Ed.

If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

*Art. 25. The full Court shall sit except when it is expressly provided otherwise.

If eleven judges can not be present, the number shall be made up by calling on deputy-judges to sit.

If, however, eleven judges are not available, a quorum of nine judges shall suffice to constitute the Court.

*Art. 26. Labor cases, particularly cases referred to in Part XIII (Labor) of the Treaty of Versailles and the corresponding portion of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. On all occasions the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to ensuring a just representation of the competing interests.

If there is a national of one only of the parties sitting as a judge in the Chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favor of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Labor cases" composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labor Office. The Governing Body will nominate, as to one-half, representatives of the workers, and as to one-half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding articles of the other Treaties of Peace.

In Labor cases the International Labor Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.

*Art. 27. Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and

Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favor of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Transit and Communications cases" composed of two persons nominated by each Member of the League of Nations.

Art. 28. The special chambers provided for in Articles 26 and 27 may, with the consent of the parties to the dispute, sit elsewhere than at The Hague.

*Art. 29. With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of three judges who, at the request of the contesting parties, may hear and determine cases by summary procedure.

Art. 30. The Court shall frame rules for regulating its procedure. In particular, it shall lay down rules for summary procedure.

*Art. 31. Judges of the nationality of each contesting party shall retain their right to sit in the case before the Court.

If the Court includes upon the Bench a judge of the nationality of one of the parties only, the other party may select from among the deputy-judges a judge of its nationality, if there be one. If there should not be one, the party may choose a judge, preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

If the Court includes upon the Bench no judge of the nationality

of the contesting parties, each of these may proceed to select or choose a judge as provided in the preceding paragraph.

Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

Judges selected or chosen as laid down in paragraphs 2 and 3 of this Article shall fulfil the conditions required by Articles 2, 16, 17, 20, 24 of this Statute. They shall take part in the decision on an equal footing with their colleagues.

*Art. 32. The judges shall receive an annual indemnity to be determined by the Assembly of the League of Nations upon the proposal of the Council. This indemnity must not be decreased during the period of a judge's appointment.

The President shall receive a special grant for his period of office, to be fixed in the same way.

The Vice-President, judges and deputy-judges, shall receive a grant for the actual performance of their duties, to be fixed in the same way.

Traveling expenses incurred in the performance of their duties shall be refunded to judges and deputy-judges who do not reside at the seat of the Court.

Grants due to judges selected or chosen as provided in Article 31 shall be determined in the same way.

The salary of the Registrar shall be decided by the Council upon the proposal of the Court.

The Assembly of the League of Nations shall lay down, on the proposal of the Council, a special regulation fixing the conditions under which retiring pensions may be given to the personnel of the Court.

Art. 33. The expenses of the Court shall be borne by the League of Nations, in such a manner as shall be decided by the Assembly upon the proposal of the Council.

Chapter II. Competence of the Court

Art. 34. Only States or Members of the League of Nations can be parties in cases before the Court.

*Art. 35. The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.

The conditions under which the Court shall be open to other

States shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

When a State which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court.

Art. 36. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in Treaties and Conventions in force.

The Members of the League of Nations and the States mentioned in the Annex to the Covenant may, either when signing or ratifying the Protocol to which the present Statute is adjoined, or at a later moment, declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

(*a*) the interpretation of a treaty;
(*b*) any question of international law;
(*c*) the existence of any fact which, if established, would constitute a breach of an international obligation;
(*d*) the nature or extent of the reparation to be made for the breach of an international obligation.

The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Art. 37. When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations, the Court will be such tribunal.

Art. 38. The Court shall apply:

1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
2. International custom, as evidence of a general practice accepted as law;
3. The general principles of law recognized by civilized nations;

4. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

Chapter III. Procedure

*Art. 39. The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

The Court may, at the request of the parties, authorize a language other than French or English to be used.

*Art. 40. Cases are brought before the Court, as the case may be, either by the notification of the special agreement, or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

The Registrar shall forthwith communicate the application to all concerned.

He shall also notify the Members of the League of Nations through the Secretary-General.

Art. 41. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either party.

Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Council.

Art. 42. The parties shall be represented by agents.

They may have the assistance of counsel or advocates before the Court.

Art. 43. The procedure shall consist of two parts: written and oral.

The written proceedings shall consist of the communication to

the judges and to the parties of Cases, Counter-Cases and, if necessary, Replies; also all papers and documents in support.

These communications shall be made through the Registrar, to the order and within the time fixed by the Court.

A certified copy of every document produced by one party shall be communicated to the other party.

The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

Art. 44. For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the government of the State upon whose territory the notice has to be served.

The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

*Art. 45. The hearing shall be under the control of the President or, in his absence, of the Vice-President; if both are absent, the senior judge shall preside.

Art. 46. The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

Art. 47. Minutes shall be made at each hearing, and signed by the Registrar and the President.

These minutes shall be the only authentic record.

Art. 48. The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Art. 49. The Court may, even before the hearing begins, call upon the agents to produce any document, or to supply any explanations. Formal note shall be taken of any refusal.

Art. 50. The Court may, at any time, entrust any individual, body, bureau, commission or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.

Art. 51. During the hearing, any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

Art. 52. After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

Art. 53. Whenever one of the parties shall not appear before the Court, or shall fail to defend his case, the other party may call upon the Court to decide in favor of his claim.

The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

Art. 54. When, subject to the control of the Court, the agents, advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed.

The Court shall withdraw to consider the judgment.

The deliberations of the Court shall take place in private and remain secret.

Art. 55. All questions shall be decided by a majority of the judges present at the hearing.

In the event of an equality of votes, the President or his deputy shall have a casting vote.

Art. 56. The judgment shall state the reasons on which it is based.

It shall contain the names of the judges who have taken part in the decision.

Art. 57. If the judgment does not represent in whole or in part the unanimous opinion of the judges, dissenting judges are entitled to deliver a separate opinion.

Art. 58. The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents.

Art. 59. The decision of the Court has no binding force except between the parties and in respect of that particular case.

Art. 60. The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Art. 61. An application for revision of a judgment can be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

The proceedings for revision will be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

The application for revision must be made at latest within six months of the discovery of the new fact.

No application for revision may be made after the lapse of ten years from the date of the sentence.

Art. 62. Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene as a third party.

It will be for the Court to decide upon this request.

Art. 63. Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

Every State so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

Art. 64. Unless otherwise decided by the Court, each party shall bear its own costs.

Parties to the Protocol of Signature and Statute

(April 1, 1935)[5]

*Abyssinia
*Union of South Africa
*Albania
*Australia
*Austria
*Belgium
*Brazil
*Bulgaria
*Canada
Chile
China
*Colombia
Cuba
Czechoslovakia
*Denmark
*Dominican Republic
*Estonia
*Finland
*France
*Germany
*Great Britain
*Greece
*Haiti
*Hungary
*India
*Iran (Persia)
*Irish Free State
*Italy
Japan
*Latvia
*Lithuania
*Luxemburg
*Netherlands
*New Zealand
*Norway
*Panama
*Paraguay
*Peru
Poland
*Portugal
*Rumania
*El Salvador
*Siam
*Spain
*Sweden
*Switzerland
*Uruguay
Venezuela
*Yugoslavia

Total: 49

[5] An asterisk indicates that the State is also bound by the "optional clause."

APPENDIX IV

Treaty To Avoid or Prevent Conflicts between the American States ("Gondra Treaty"), Santiago, May 3, 1923.[1]

The Governments represented at the Fifth International Conference of American States, desiring to strengthen progressively the principles of justice and of mutual respect which inspire the policy observed by them in their reciprocal relations, and to quicken in their peoples sentiments of concord and of loyal friendship which may contribute toward the consolidation of such relations,

Confirm their most sincere desire to maintain an immutable peace, not only between themselves but also with all the other nations of the earth;

Condemn armed peace which increases military and naval forces beyond the necessities of domestic security and the sovereignty and independence of States, and,

With the firm purpose of taking all measures which will avoid or prevent the conflicts which may eventually occur between them, agree to the present Treaty, negotiated and concluded by the Plenipotentiary Delegates whose full powers were found to be in good and due form by the Conference:

Venezuela: César Zumeta, José Austria.

Panamá: José Lefevre.

United States of America: Henry P. Fletcher, Frank B. Kellogg, Atlee Pomerene, Willard Saulsbury, George E. Vincent, Frank C. Partridge, William Eric Fowler, Leo S. Rowe.

Uruguay: Eugenio Martínez Thedy.

Ecuador: José Rafael Bustamante.

Chile: Manuel Rivas Vicuña, Cárlos Aldunate Solar, Luis Barros Borgoño, Emilio Bello Codesido, Antonio Huneeus, Alcibiades Roldán, Guillermo Subercaseaux, Alejandro del Rio.

Guatemala: Eduardo Poirier, Máximo Soto Hall.

Nicaragua: Carlos Cuadra Pasos, Arturo Elizondo.

United States of Brazil: Afranio de Mello Franco, Sylvino Gurgel do Amaral, Helio Lobo.

[1] From 2 Hudson, *International Legislation,* p. 1006. The French, Portuguese, and Spanish versions are also authoritative.

Colombia: Guillermo Valencia.

Cuba: José C. Vidal Caro, Cárlos García Vélez, Arístides Agüero, Manuel Márquez Sterling.

Paraguay: Manuel Gondra.

Dominican Republic: Tulio M. Cestero.

Honduras: Benjamin Villaseca Mujica.

Argentina: Manuel E. Malbrán.

Haiti: Arturo Rameau.

Article 1. All controversies which for any cause whatsoever may arise between two or more of the High Contracting Parties and which it has been impossible to settle through diplomatic channels, or to submit to arbitration in accordance with existing treaties, shall be submitted for investigation and report to a Commission to be established in the manner provided for in Article 4. The High Contracting Parties undertake, in case of disputes, not to begin mobilization or concentration of troops on the frontier of the other Party, nor to engage in any hostile acts or preparations for hostilities, from the time steps are taken to convene the Commission until the said Commission has rendered its report or until the expiration of the time provided for in Article 7.

This provision shall not abrogate nor limit the obligations contained in treaties of arbitration in force between two or more of the High Contracting Parties, nor the obligations arising out of them.

It is understood that in disputes arising between Nations which have no general treaties of arbitration, the investigation shall not take place in questions affecting constitutional provisions, nor in questions already settled by other treaties.

Art. 2. The controversies referred to in Article 1 shall be submitted to the Commission of Inquiry whenever it has been impossible to settle them through diplomatic negotiations or procedure or by submission to arbitration, or in cases in which the circumstances of fact render all negotiation impossible and there is imminent danger of an armed conflict between the Parties. Any one of the Governments directly interested in the investigation of the facts giving rise to the controversy may apply for the convocation of the Commission of Inquiry and to this end it shall be necessary only to communicate officially this decision to the other Party and to one of the Permanent Commissions established by Article 3.

Art. 3. Two Commissions to be designated as permanent shall

be established with their seats at Washington (United States of America) and at Montevideo (Uruguay). They shall be composed of the three American diplomatic agents longest accredited in said capitals, and at the call of the Foreign Offices of those States they shall organize, appointing their respective chairmen. Their functions shall be limited to receiving from the interested Parties the request for a convocation of the Commission of Inquiry, and to notifying the other Party thereof immediately. The Government requesting the convocation shall appoint at the same time the persons who shall compose the Commission of Inquiry in representation of that Government, and the other Party shall, likewise, as soon as it receives notification, designate its members.

The Party initiating the procedure established by this Treaty may address itself, in doing so, to the Permanent Commission which it considers most efficacious for a rapid organization of the Commission of Inquiry. Once the request for convocation has been received and the Permanent Commission has made the respective notifications the question or controversy existing between the Parties and as to which no agreement has been reached, will *ipso facto* be suspended.

Art. 4. The Commission of Inquiry shall be composed of five members, all nationals of American States, appointed in the following manner: each Government shall appoint two at the time of convocation, only one of whom may be a national of its country. The fifth shall be chosen by common accord by those already appointed and shall perform the duties of President. However, a citizen of a nation already represented on the Commission may not be elected. Any of the Governments may refuse to accept the elected member, for reasons which it may reserve to itself, and in such event a substitute shall be appointed, with the mutual consent of the Parties, within thirty days following the notification of this refusal. In the failure of such agreement, the designation shall be made by the President of an American Republic not interested in the dispute, who shall be selected by lot by the Commissioners already appointed, from a list of not more than six American Presidents to be formed as follows: each Government party to the controversy, or if there are more than two Governments directly interested in the dispute, the Government or Governments on each side of the controversy, shall designate three Presidents of American States which maintain the same friendly relations with all the Parties to the dispute.

Whenever there are more than two Governments directly interested in a controversy, and the interests of two or more of them are identical, the Government or Governments on each side of the controversy shall have the right to increase the number of their Commissioners, as far as it may be necessary, so that both sides in the dispute may always have equal representation on the Commission.

Once the Commission has been thus organized in the capital city, seat of the Permanent Commission which issued the order of convocation, it shall notify the respective Governments of the date of its inauguration, and it may then determine upon the place or places in which it will function, taking into account the greater facilities for investigation.

The Commission of Inquiry shall itself establish its rules of procedure. In this regard there are recommended for incorporation into said rules of procedure the provisions contained in Articles 9, 10, 11, 12 and 13 of the Convention signed in Washington, February, 1923, between the Government of the United States of America and the Governments of the Republics of Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica, which appear in the appendix to this Treaty.[2]

Its decisions and final report shall be agreed to by the majority of its members.

Each Party shall bear its own expenses and a proportionate share of the general expenses of the Commission.

Art. 5. The Parties to the controversy shall furnish the antecedents and data necessary for the investigation. The Commission shall render its report within one year from the date of its inauguration. If it has been impossible to finish the investigation or draft the report within the period agreed upon, it may be extended six months beyond the period established, provided the Parties to the controversy are in agreement upon this point.

Art. 6. The findings of the Commission will be considered as reports upon the disputes, which were the subjects of the investigation, but will not have the value or force of judicial decisions or arbitral awards.

Art. 7. Once the report is in possession of the Governments parties to the dispute, six months' time will be available for renewed negotiations in order to bring about a settlement of the

[2] This appendix is omitted.—Ed.

difficulty in view of the findings of said report; and if during this new term they should be unable to reach a friendly arrangement, the Parties in dispute shall recover entire liberty of action to proceed as their interests may dictate in the question dealt with in the investigation.

Art. 8. The present Treaty does not abrogate analogous conventions which may exist or may in the future exist between two or more of the High Contracting Parties; neither does it partially abrogate any of their provisions, although they may provide special circumstances or conditions differing from those herein stipulated.

Art. 9. The present Treaty shall be ratified by the High Contracting Parties, in conformity with their respective constitutional procedures, and the ratifications shall be deposited in the Ministry for Foreign Affairs of the Republic of Chile, which will communicate them through diplomatic channels to the other Signatory Governments, and it shall enter into effect for the Contracting Parties in the order of ratification.

The Treaty shall remain in force indefinitely; any of the High Contracting Parties may denounce it and the denunciation shall take effect as regards the Party denouncing one year after notification thereof has been given.

Notice of the denunciation shall be sent to the Government of Chile, which will transmit it for appropriate action to the other Signatory Governments.

Art. 10. The American States which have not been represented in the Fifth Conference may adhere to the present Treaty, transmitting the official documents setting forth such adherence to the Ministry for Foreign Affairs of Chile, which will communicate it to the other Contracting Parties.

In witness whereof, the Plenipotentiaries and Delegates sign this Convention in Spanish, English, Portuguese and French and affix the seal of the Fifth International Conference of American States, in the city of Santiago, Chile, on the 3rd day of May in the year one thousand nine hundred and twenty three.

This Convention shall be filed in the Ministry for Foreign Affairs of the Republic of Chile in order that certified copies thereof may be forwarded through diplomatic channels to each of the Signatory States.

[Signatures omitted.]

Parties to the Gondra Treaty

(April 1, 1935)

United States of America
Bolivia
Brazil
Chile
Costa Rica
Cuba
Dominican Republic
Ecuador
Guatemala
Haiti
Honduras
Mexico
Nicaragua
Panama
Paraguay
Peru
El Salvador
Uruguay
Venezuela

Total: 19

APPENDIX V

Treaty for the Renunciation of War ("Pact of Paris"), Paris, August 27, 1928.[1]

The President of the German Reich, the President of the United States of America, His Majesty the King of the Belgians, the President of the French Republic, His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, His Majesty the King of Italy, His Majesty the Emperor of Japan, the President of the Republic of Poland, the President of the Czechoslovak Republic,

Deeply sensible of their solemn duty to promote the welfare of mankind;

Persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples may be perpetuated;

Convinced that all changes in their relations with one another should be sought only by pacific means and be the result of a peaceful and orderly process, and that any signatory Power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this Treaty;

Hopeful that, encouraged by their example, all the other nations of the world will join in this humane endeavor and by adhering to the present Treaty as soon as it comes into force bring their peoples within the scope of its beneficent provisions, thus uniting the civilized nations of the world in a common renunciation of war as an instrument of their national policy;

Have decided to conclude a Treaty and for that purpose have appointed as their respective Plenipotentiaries:[2]

The President of the *German Reich:* Gustav Stresemann;

The President of the *United States of America:* Frank B. Kellogg;

His Majesty the King of the *Belgians:* Paul Hymans;

The President of the *French Republic:* Aristide Briand;

[1] From 4 Hudson, *International Legislation,* p. 2522. The French version is also authoritative.

[2] The titles of plenipotentiaries are omitted.—Ed.

His Majesty the King of *Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India:*

For *Great Britain* and *Northern Ireland* and all parts of the *British Empire* which are not separate Members of the League of Nations: Lord Cushendun;

For *Canada:* William Lyon Mackenzie King;

For *Australia:* Alexander John McLachlan;

For *New Zealand:* Christopher James Parr;

For the *Union of South Africa:* Jacobus Stephanus Smit;

For the *Irish Free State:* William Thomas Cosgrave;

For *India:* Lord Cushendun;

His Majesty the King of *Italy:* Gaetano Manzoni;

His Majesty the Emperor of *Japan:* Count Uchida;

The President of the *Republic of Poland:* A. Zaleski;

The President of the *Czechoslovak Republic:* Edvard Beneš;

who, having communicated to one another their full powers found in good and due form have agreed upon the following articles:

Article 1. The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

Art. 2. The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

Art. 3. The present Treaty shall be ratified by the High Contracting Parties named in the Preamble in accordance with their respective constitutional requirements, and shall take effect as between them as soon as all their several instruments of ratification shall have been deposited at Washington.

This Treaty shall, when it has come into effect as prescribed in the preceding paragraph, remain open as long as may be necessary for adherence by all the other Powers of the world. Every instrument evidencing the adherence of a Power shall be deposited at Washington and the Treaty shall immediately upon such deposit become effective as between the Power thus adhering and the other Powers parties hereto.

It shall be the duty of the Government of the United States to furnish each Government named in the Preamble and every Government subsequently adhering to this Treaty with a certified copy

of the Treaty and of every instrument of ratification or adherence. It shall also be the duty of the Government of the United States telegraphically to notify such Governments immediately upon the deposit with it of each instrument of ratification or adherence.

In faith whereof the respective Plenipotentiaries have signed this Treaty in the French and English languages both texts having equal force, and hereunto affix their seals.

Done at Paris, the twenty-seventh day of August in the year one thousand nine hundred and twenty-eight.

[Signed:] Gustav Stresemann, Frank B. Kellogg, Paul Hymans, Ari. Briand, Cushendun, W. L. Mackenzie King, A. J. McLachlan, C. J. Parr, J. S. Smit, Liam T. MacCosgair, Cushendun, G. Manzoni, Uchida, August Zaleski, Dr. Edvard Beneš.

Parties to the Pact of Paris

(April 1, 1935)

Abyssinia
Afghanistan
Union of South Africa
Albania
Australia
Austria
Belgium
Brazil
Bulgaria
Canada
Chile
China
Colombia
Costa Rica
Cuba
Czechoslovakia
Danzig
Denmark
Dominican Republic
Ecuador
Egypt
Estonia
Finland
France
Germany
Great Britain
Greece
Guatemala
Haiti
Honduras
Hungary
Iceland
India
Iraq
Irish Free State
Italy
Japan
Latvia
Liberia
Lithuania
Luxemburg
Mexico
Netherlands
New Zealand
Nicaragua
Norway
Panama
Paraguay
Persia
Peru
Poland
Portugal
Rumania
Saudi Arabia
Siam
Spain
Sweden
Switzerland
Turkey
Union of Soviet Socialist Republics
United States of America
Venezuela
Yugoslavia

Total: 63

APPENDIX VI

General Act for the Pacific Settlement of International Disputes, Geneva, September 26, 1928.[1]

Chapter I. Conciliation

Article 1. Disputes of every kind between two or more Parties to the present General Act which it has not been possible to settle by diplomacy shall, subject to such reservations as may be made under Article 39, be submitted, under the conditions laid down in the present Chapter, to the procedure of conciliation.

Art. 2. The disputes referred to in the preceding article shall be submitted to a permanent or special Conciliation Commission constituted by the parties to the dispute.

Art. 3. On a request to that effect being made by one of the Contracting Parties to another Party, a permanent Conciliation Commission shall be constituted within a period of six months.

Art. 4. Unless the parties concerned agree otherwise, the Conciliation Commission shall be constituted as follows:

1. The Commission shall be composed of five members. The parties shall each nominate one commissioner, who may be chosen from among their respective nationals. The three other commissioners shall be appointed by agreement from among the nationals of third Powers. These three commissioners must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties. The parties shall appoint the President of the Commission from among them.

2. The commissioners shall be appointed for three years. They shall be re-eligible. The commissioners appointed jointly may be replaced during the course of their mandate by agreement between the parties. Either party may, however, at any time replace a commissioner whom it has appointed. Even if replaced, the commissioners shall continue to exercise their functions until the termination of the work in hand.

3. Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

[1] From 4 Hudson, *International Legislation,* p. 2529. The French version is also authoritative.

Art. 5. If, when a dispute arises, no permanent Conciliation Commission appointed by the parties is in existence, a special commission shall be constituted for the examination of the dispute within a period of three months from the date at which a request to that effect is made by one of the parties to the other party. The necessary appointments shall be made in the manner laid down in the preceding article, unless the parties decide otherwise.

Art. 6.—1. If the appointment of the commissioners to be designated jointly is not made within the periods provided for in Articles 3 and 5, the making of the necessary appointments shall be entrusted to a third Power, chosen by agreement between the parties, or on request of the parties, to the Acting President of the Council of the League of Nations.

2. If no agreement is reached on either of these procedures, each party shall designate a different Power, and the appointment shall be made in concert by the Powers thus chosen.

3. If, within a period of three months, the two Powers have been unable to reach an agreement, each of them shall submit a number of candidates equal to the number of members to be appointed. It shall then be decided by lot which of the candidates thus designated shall be appointed.

Art. 7.—1. Disputes shall be brought before the Conciliation Commission by means of an application addressed to the President by the two parties acting in agreement, or in default thereof by one or other of the parties.

2. The application, after giving a summary account of the subject of the dispute, shall contain the invitation to the Commission to take all necessary measures with a view to arriving at an amicable solution.

3. If the application emanates from only one of the parties, the other party shall, without delay, be notified by it.

Art. 8.—1. Within fifteen days from the date on which a dispute has been brought by one of the parties before a permanent Conciliation Commission, either party may replace its own commissioner, for the examination of the particular dispute, by a person possessing special competence in the matter.

2. The party making use of this right shall immediately notify the other party; the latter shall, in such case, be entitled to take similar action within fifteen days from the date on which it received the notification.

Art. 9.—1. In the absence of agreement to the contrary between

the parties, the Conciliation Commission shall meet at the seat of the League of Nations, or at some other place selected by its President.

2. The Commission may in all circumstances request the Secretary-General of the League of Nations to afford it his assistance.

Art. 10. The work of the Conciliation Commission shall not be conducted in public unless a decision to that effect is taken by the Commission with the consent of the parties.

Art. 11.—1. In the absence of agreement to the contrary between the parties, the Conciliation Commission shall lay down its own procedure, which in any case must provide for both parties being heard. In regard to enquiries, the Commission, unless it decides unanimously to the contrary, shall act in accordance with the provisions of Part III of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

2. The parties shall be represented before the Conciliation Commission by agents, whose duty shall be to act as intermediaries between them and the Commission; they may, moreover, be assisted by counsel and experts appointed by them for that purpose and may request that all persons whose evidence appears to them desirable shall be heard.

3. The Commission, for its part, shall be entitled to request oral explanations from the agents, counsel and experts of both parties, as well as from all persons it may think desirable to summon with the consent of their Governments.

Art. 12. In the absence of agreement to the contrary between the parties, the decisions of the Conciliation Commission shall be taken by a majority vote, and the Commission may only take decisions on the substance of the dispute if all its members are present.

Art. 13. The parties undertake to facilitate the work of the Conciliation Commission, and particularly to supply it to the greatest possible extent with all relevant documents and information, as well as to use the means at their disposal to allow it to proceed in their territory, and in accordance with their law, to the summoning and hearing of witnesses or experts and to visit the localities in question.

Art. 14.—1. During the proceedings of the Commission, each of the commissioners shall receive emoluments the amount of which shall be fixed by agreement between the parties, each of which shall contribute an equal share.

2. The general expenses arising out of the working of the Commission shall be divided in the same manner.

Art. 15.—1. The task of the Conciliation Commission shall be to elucidate the questions in dispute, to collect with that object all necessary information by means of enquiry or otherwise, and to endeavour to bring the parties to an agreement. It may, after the case has been examined, inform the parties of the terms of settlement which seem suitable to it, and lay down the period within which they are to make their decision.

2. At the close of the proceedings, the Commission shall draw up a procès-verbal stating, as the case may be, either that the parties have come to an agreement and, if need arises, the terms of the agreement, or that it has been impossible to effect a settlement. No mention shall be made in the procès-verbal of whether the Commission's decisions were taken unanimously or by a majority vote.

3. The proceedings of the Commission must, unless the parties otherwise agree, be terminated within six months from the date on which the Commission shall have been given cognisance of the dispute.

Art. 16. The Commission's procès-verbal shall be communicated without delay to the parties. The parties shall decide whether it shall be published.

Chapter II. Judicial Settlement

Art. 17. All disputes with regard to which the parties are in conflict as to their respective rights shall, subject to any reservations which may be made under Article 39, be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal.

It is understood that the disputes referred to above include in particular those mentioned in Article 36 of the Statute of the Permanent Court of International Justice.

Art. 18. If the parties agree to submit the disputes mentioned in the preceding article to an arbitral tribunal, they shall draw up a special agreement in which they shall specify the subject of the dispute, the arbitrators selected, and the procedure to be followed. In the absence of sufficient particulars in the special agreement, the provisions of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes shall apply so

far as is necessary. If nothing is laid down in the special agreement as to the rules regarding the substance of the dispute to be followed by the arbitrators, the tribunal shall apply the substantive rules enumerated in Article 38 of the Statute of the Permanent Court of International Justice.

Art. 19. If the parties fail to agree concerning the special agreement referred to in the preceding article, or fail to appoint arbitrators, either party shall be at liberty, after giving three months' notice, to bring the dispute by an application direct before the Permanent Court of International Justice.

Art. 20.—1. Notwithstanding the provisions of Article 1, disputes of the kind referred to in Article 17 arising between parties who have acceded to the obligations contained in the present chapter shall only be subject to the procedure of conciliation if the parties so agree.

2. The obligation to resort to the procedure of conciliation remains applicable to disputes which are excluded from judicial settlement only by the operation of reservations under the provisions of Article 39.

3. In the event of recourse to and failure of conciliation, neither party may bring the dispute before the Permanent Court of International Justice or call for the constitution of the arbitral tribunal referred to in Article 18 before the expiration of one month from the termination of the proceedings of the Conciliation Commission.

Chapter III. Arbitration

Art. 21. Any dispute not of the kind referred to in Article 17 which does not, within the month following the termination of the work of the Conciliation Commission provided for in Chapter I, form the object of an agreement between the parties, shall, subject to such reservations as may be made under Article 39, be brought before an arbitral tribunal which, unless the parties otherwise agree, shall be constituted in the manner set out below.

Art. 22. The Arbitral Tribunal shall consist of five members. The parties shall each nominate one member, who may be chosen from among their respective nationals. The two other arbitrators and the Chairman shall be chosen by common agreement from among the nationals of third Powers. They must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties.

Art. 23.—1. If the appointment of the members of the Arbitral

Tribunal is not made within a period of three months from the date on which one of the parties requested the other party to constitute an arbitral tribunal, a third Power, chosen by agreement between the parties, shall be requested to make the necessary appointments.

2. If no agreement is reached on this point, each party shall designate a different Power, and the appointments shall be made in concert by the Powers thus chosen.

3. If, within a period of three months, the two Powers so chosen have been unable to reach an agreement, the necessary appointments shall be made by the President of the Permanent Court of International Justice. If the latter is prevented from acting or is a subject of one of the parties, the nomination shall be made by the Vice-President. If the latter is prevented from acting or is a subject of one of the parties, the appointments shall be made by the oldest member of the Court who is not a subject of either party.

Art. 24. Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Art. 25. The parties shall draw up a special agreement determining the subject of the disputes and the details of procedure.

Art. 26. In the absence of sufficient particulars in the special agreement regarding the matters referred to in the preceding article, the provisions of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes shall apply so far as is necessary.

Art. 27. Failing the conclusion of a special agreement within a period of three months from the date on which the Tribunal was constituted, the dispute may be brought before the Tribunal by an application by one or other party.

Art. 28. If nothing is laid down in the special agreement or no special agreement has been made, the Tribunal shall apply the rules in regard to the substance of the dispute enumerated in Article 38 of the Statute of the Permanent Court of International Justice. In so far as there exists no such rule applicable to the dispute, the Tribunal shall decide *ex aequo et bono*.

Chapter IV. General Provisions

Art. 29.—1. Disputes for the settlement of which a special procedure is laid down in other conventions in force between the par-

ties to the dispute shall be settled in conformity with the provisions of those conventions.

2. The present General Act shall not affect any agreements in force by which conciliation procedure is established between the Parties or they are bound by obligations to resort to arbitration or judicial settlement which ensure the settlement of the dispute. If, however, these agreements provide only for a procedure of conciliation, after such procedure has been followed without result, the provisions of the present General Act concerning judicial settlement or arbitration shall be applied in so far as the parties have acceded thereto.

Art. 30. If a party brings before a Conciliation Commission a dispute which the other party, relying on conventions in force between the parties, has submitted to the Permanent Court of International Justice or an Arbitral Tribunal, the Commission shall defer consideration of the dispute until the Court or the Arbitral Tribunal has pronounced upon the conflict of competence. The same rule shall apply if the Court or the Tribunal is seized of the case by one of the parties during the conciliation proceedings.

Art. 31.—1. In the case of a dispute the occasion of which, according to the municipal law of one of the parties, falls within the competence of its judicial or administrative authorities, the party in question may object to the matter in dispute being submitted for settlement by the different methods laid down in the present General Act until a decision with final effect has been pronounced, within a reasonable time, by the competent authority.

2. In such a case, the party which desires to resort to the procedures laid down in the present General Act must notify the other party of its intention within a period of one year from the date of the aforementioned decision.

Art. 32. If, in a judicial sentence or arbitral award, it is declared that a judgment, or a measure enjoined by a court of law or other authority of one of the parties to the dispute, is wholly or in part contrary to international law, and if the constitutional law of that party does not permit or only partially permits the consequences of the judgment or measure in question to be annulled, the parties agree that the judicial sentence or arbitral award shall grant the injured party equitable satisfaction.

Art. 33.—1. In all cases where a dispute forms the object of arbitration or judicial proceedings, and particularly if the question on which the parties differ arises out of acts already committed or

on the point of being committed, the Permanent Court of International Justice, acting in accordance with Article 41 of its Statute, or the Arbitral Tribunal, shall lay down within the shortest possible time the provisional measures to be adopted. The parties to the dispute shall be bound to accept such measures.

2. If the dispute is brought before a Conciliation Commission, the latter may recommend to the parties the adoption of such provisional measures as it considers suitable.

3. The parties undertake to abstain from all measures likely to react prejudicially upon the execution of the judicial or arbitral decision or upon the arrangements proposed by the Conciliation Commission and, in general, to abstain from any sort of action whatsoever which may aggravate or extend the dispute.

Art. 34. Should a dispute arise between more than two Parties to the present General Act, the following rules shall be observed for the application of the forms of procedure described in the foregoing provisions:

(a) In the case of conciliation procedure, a special commission shall invariably be constituted. The composition of such commission shall differ according as the parties all have separate interests or as two or more of their number act together.

In the former case, the parties shall each appoint one commissioner and shall jointly appoint commissioners nationals of third Powers not parties to the dispute, whose number shall always exceed by one the number of commissioners appointed separately by the parties.

In the second case, the parties who act together shall appoint their commissioner jointly by agreement between themselves and shall combine with the other party or parties in appointing third commissioners.

In either event, the parties, unless they agree otherwise, shall apply Article 5 and the following articles of the present Act, so far as they are compatible with the provisions of the present article.

(b) In the case of judicial procedure, the Statute of the Permanent Court of International Justice shall apply.

(c) In the case of arbitral procedure, if agreement is not secured as to the composition of the tribunal, in the case of the disputes mentioned in Article 17, each party shall have the right, by means of an application, to submit the dispute to the Permanent

Court of International Justice; in the case of the disputes mentioned in Article 21, the above Article 22 and following articles shall apply, but each party having separate interests shall appoint one arbitrator and the number of arbitrators separately appointed by the parties to the dispute shall always be one less than that of the other arbitrators.

Art. 35.—1. The present General Act shall be applicable as between the Parties thereto, even though a third Power, whether a party to the Act or not, has an interest in the dispute.

2. In conciliation procedure, the parties may agree to invite such third Power to intervene.

Art. 36.—1. In judicial or arbitral procedure, if a third Power should consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit to the Permanent Court of International Justice or to the arbitral tribunal a request to intervene as a third Party.

2. It will be for the Court or the tribunal to decide upon this request.

Art. 37.—1. Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar of the Permanent Court of International Justice or the arbitral tribunal shall notify all such States forthwith.

2. Every State so notified has the right to intervene in the proceedings; but, if it uses this right, the construction given by the decision will be binding upon it.

Art. 38. Accessions to the present General Act may extend:

A. Either to all the provisions of the Act (Chapters I, II, III and IV);

B. Or to those provisions only which relate to conciliation and judicial settlement (Chapters I and II), together with the general provisions dealing with these procedures (Chapter IV);

C. Or to those provisions only which relate to conciliation (Chapter I), together with the general provisions concerning that procedure (Chapter IV).

The Contracting Parties may benefit by the accessions of other Parties only in so far as they have themselves assumed the same obligations.

Art. 39.—1. In addition to the power given in the preceding article, a Party, in acceding to the present General Act, may make

his acceptance conditional upon the reservations exhaustively enumerated in the following paragraph. These reservations must be indicated at the time of accession.

2. These reservations may be such as to exclude from the procedure described in the present Act:

(a) Disputes arising out of facts prior to the accession either of the Party making the reservation or of any other Party with whom the said Party may have a dispute;

(b) Disputes concerning questions which by international law are solely within the domestic jurisdiction of States;

(c) Disputes concerning particular cases or clearly specified subject-matters, such as territorial status, or disputes falling within clearly defined categories.

3. If one of the parties to a dispute has made a reservation, the other parties may enforce the same reservation in regard to that party.

4. In the case of Parties who have acceded to the provisions of the present General Act relating to judicial settlement or to arbitration, such reservations as they may have made shall, unless otherwise expressly stated, be deemed not to apply to the procedure of conciliation.

Art. 40. A Party whose accession has been only partial, or was made subject to reservations, may at any moment, by means of a simple declaration, either extend the scope of his accession or abandon all or part of his reservations.

Art. 41. Disputes relating to the interpretation or application of the present General Act, including those concerning the classification of disputes and the scope of reservations, shall be submitted to the Permanent Court of International Justice.

Art. 42. The present General Act, of which the French and English texts shall both be authentic, shall bear the date of the 26th of September, 1928.

Art. 43.—1. The present General Act shall be open to accession by all the Heads of States or other competent authorities of the Members of the League of Nations and the non-Member States to which the Council of the League of Nations has communicated a copy for this purpose.

2. The instruments of accession and the additional declarations provided for by Article 40 shall be transmitted to the Secretary-General of the League of Nations, who shall notify their re-

ceipt to all the Members of the League and to the non-Member States referred to in the preceding paragraph.

3. The Secretary-General of the League of Nations shall draw up three lists, denominated respectively by the letters A, B and C, corresponding to the three forms of accession to the present Act provided for in Article 38, in which shall be shown the accessions and additional declarations of the Contracting Parties. These lists, which shall be continually kept up to date, shall be published in the annual report presented to the Assembly of the League of Nations by the Secretary-General.

Art. 44.—1. The present General Act shall come into force on the ninetieth day following the receipt by the Secretary-General of the League of Nations of the accession of not less than two Contracting Parties.

2. Accessions received after the entry into force of the Act, in accordance with the previous paragraph, shall become effective as from the ninetieth day following the date of receipt by the Secretary-General of the League of Nations. The same rule shall apply to the additional declarations provided for by Article 40.

Art. 45.—1. The present General Act shall be concluded for a period of five years, dating from its entry into force.

2. It shall remain in force for further successive periods of five years in the case of Contracting Parties which do not denounce it at least six months before the expiration of the current period.

3. Denunciation shall be effected by a written notification addressed to the Secretary-General of the League of Nations, who shall inform all the Members of the League and the non-Member States referred to in Article 43.

4. A denunciation may be partial only, or may consist in notification of reservations not previously made.

5. Notwithstanding denunciation by one of the Contracting Parties concerned in a dispute, all proceedings pending at the expiration of the current period of the General Act shall be duly completed.

Art. 46. A copy of the present General Act, signed by the President of the Assembly and by the Secretary-General of the League of Nations, shall be deposited in the archives of the Secretariat; a certified true copy shall be delivered by the Secretary-General to all the Members of the League of Nations and to the non-Member States indicated by the Council of the League of Nations.

Art. 47. The present General Act shall be registered by the Secretary-General of the League of Nations on the date of its entry into force.

The President of the ninth ordinary session of the Assembly of the League of Nations: (Signed) HERLUF ZAHLE.
The Secretary-General: (Signed) ERIC DRUMMOND.

PARTIES TO THE GENERAL ACT

(APRIL 1, 1935)

Abyssinia	Irish Free State
Australia	Italy
Belgium	Luxemburg
Canada	Netherlands[2]
Denmark	New Zealand
Estonia	Norway
Finland	Peru
France	Spain
Great Britain	Sweden[2]
Greece	Switzerland
India	Turkey

Total: 22

[2] Acceded only to Chapters I, II, and IV of the General Act.

APPENDIX VII

INTER-AMERICAN CONVENTION ON ARBITRATION, WASHINGTON, JANUARY 5, 1929.[1]

The Governments of Venezuela, Chile, Boliva, Uruguay, Costa Rica, Perú, Honduras, Guatemala, Haiti, Ecuador, Colombia, Brazil, Panamá, Paraguay, Nicaragua, Mexico, El Salvador, the Dominican Republic, Cuba, and the United States of America, represented at the Conference on Conciliation and Arbitration, assembled at Washington, pursuant to the Resolution adopted on February 18, 1928, by the Sixth International Conference of American States held in the City of Habana;

In accordance with the solemn declarations made at said Conference to the effect that the American Republics condemn war as an instrument of national policy and adopt obligatory arbitration as the means for the settlement of their international differences of a juridical character;

Being convinced that the Republics of the New World, governed by the principles, institutions and practices of democracy and bound furthermore by mutual interests, which are increasing each day, have not only the necessity but also the duty of avoiding the disturbance of continental harmony whenever differences which are susceptible of judicial decision arise among them;

Conscious of the great moral and material benefits which peace offers to humanity and that the sentiment and opinion of America demand, without delay, the organization of an arbitral system which shall strengthen the permanent reign of justice and law;

And animated by the purpose of giving conventional form to these postulates and aspirations with the minimum exceptions which they have considered indispensable to safeguard the independence and sovereignty of the States and in the most ample manner possible under present international conditions, have resolved to effect the present treaty, and for that purpose have designated the Plenipotentiaries hereinafter named:

[1] From 4 Hudson, *International Legislation*, p. 2625. The French, Portuguese, and Spanish versions are also authoritative.

Venezuela: Carlos F. Grisanti, Francisco Arroyo Parejo;
Chile: Manuel Foster Recabarren, Antonio Planet;
Bolivia: Eduardo Diez de Medina;
Uruguay: José Pedro Varela;
Costa Rica: Manuel Castro Quesada, José Tible-Machado;
Perú: Hernán Velarde, Victor M. Maúrtua;
Honduras: Rómulo Durón, Marcos López Ponce;
Guatemala: Adrián Recinos, José Falla;
Haiti: Auguste Bonamy, Raoul Lizaire;
Ecuador: Gonzalo Zaldumbide;
Colombia: Enrique Olaya Herrera, Carlos Escallón;
Brazil: S. Gurgel do Amaral, A. G. de Araujo-Jorge;
Panamá: Ricardo J. Alfaro, Carlos L. López;
Paraguay: Eligio Ayala;
Nicaragua: Máximo H. Zepeda, Adrián Recinos, J. Lisandro Medina;
Mexico: Fernando González Roa, Benito Flores;
El Salvador: Cayetano Ochoa, David Rosales, Jr.;
Dominican Republic: Angel Morales, Gustavo A. Díaz;
Cuba: Orestes Ferrara, Gustavo Gutiérrez;
United States of America: Frank B. Kellogg, Charles Evans Hughes.

Who, after having deposited their full powers, found in good and due form by the Conference, have agreed upon the following:

Article 1. The High Contracting Parties bind themselves to submit to arbitration all differences of an international character which have arisen or may arise between them by virtue of a claim of right made by one against the other under treaty or otherwise, which it has not been possible to adjust by diplomacy and which are juridical in their nature by reason of being susceptible of decision by the application of the principles of law.

There shall be considered as included among the questions of juridical character:

(a) The interpretation of a treaty;

(b) Any question of international law;

(c) The existence of any fact which, if established, would constitute a breach of an international obligation;

(d) The nature and extent of the reparation to be made for the breach of an international obligation.

The provisions of this treaty shall not preclude any of the Parties, before resorting to arbitration, from having recourse to procedures of investigation and conciliation established in conventions then in force between them.

Art. 2. There are excepted from the stipulations of this treaty the following controversies:

(a) Those which are within the domestic jurisdiction of any of the Parties to the dispute and are not controlled by international law; and

(b) Those which affect the interest or refer to the action of a State not a Party to this treaty.

Art. 3. The arbitrator or tribunal who shall decide the controversy shall be designated by agreement of the Parties.

In the absence of an agreement the following procedure shall be adopted:

Each Party shall nominate two arbitrators, of whom only one may be a national of said Party or selected from the persons whom said Party has designated as members of the Permanent Court of Arbitration at The Hague. The other member may be of any other American nationality. These arbitrators shall in turn select a fifth arbitrator who shall be the president of the court.

Should the arbitrators be unable to reach an agreement among themselves for the selection of a fifth American arbitrator, or in lieu thereof, of another who is not, each Party shall designate a non-American member of the Permanent Court of Arbitration at The Hague, and the two persons so designated shall select the fifth arbitrator, who may be of any nationality other than that of a Party to the dispute.

Art. 4. The Parties to the dispute shall formulate by common accord, in each case, a special agreement which shall clearly define the particular subject-matter of the controversy, the seat of the court, the rules which will be observed in the proceedings, and the other conditions to which the Parties may agree.

If an accord has not been reached with regard to the agreement within three months reckoned from the date of the installation of the court, the agreement shall be formulated by the court.

Art. 5. In case of death, resignation or incapacity of one or more of the arbitrators the vacancy shall be filled in the same manner as the original appointment.

Art. 6. When there are more than two States directly interested in the same controversy, and the interests of two or more of them are similar, the State or States who are on the same side of the question may increase the number of arbitrators on the court, provided that in all cases the Parties on each side of the controversy shall appoint an equal number of arbitrators. There shall also be a presiding arbitrator selected in the same manner as that provided in the last paragraph of Article 3, the Parties on each side of the controversy being regarded as a single Party for the purpose of making the designation therein described.

Art. 7. The award, duly pronounced and notified to the Parties, settles the dispute definitively and without appeal.

Differences which arise with regard to its interpretation or execution shall be submitted to the decision of the court which rendered the award.

Art. 8. The reservations made by one of the High Contracting Parties shall have the effect that the other Contracting Parties are not bound with respect to the Party making the reservations except to the same extent as that expressed therein.

Art. 9. The present treaty shall be ratified by the High Contracting Parties in conformity with their respective constitutional procedures.

The original treaty and the instruments of ratification shall be deposited in the Department of State of the United States of America which shall give notice of the ratifications through diplomatic channels to the other signatory Governments and the treaty shall enter into effect for the High Contracting Parties in the order that they deposit their ratifications.

This treaty shall remain in force indefinitely, but it may be denounced by means of one year's previous notice at the expiration of which it shall cease to be in force as regards the Party denouncing the same, but shall remain in force as regards the other signatories. Notice of the denunciation shall be addressed to the Department of State of the United States of America which will transmit it for appropriate action to the other signatory Governments.

Any American State not a signatory of this treaty may adhere to the same by transmitting the official instrument setting forth such adherence to the Department of State of the United States

of America which will notify the other High Contracting Parties thereof in the manner heretofore mentioned.

In witness whereof the above-mentioned Plenipotentiaries have signed this treaty in English, Spanish, Portuguese, and French and hereunto affix their respective seals.

Done at the city of Washington, on this fifth day of January, 1929.

[Signatures omitted.]

PROTOCOL OF PROGRESSIVE ARBITRATION, WASHINGTON, JANUARY 5, 1929.

Whereas, a General Treaty of Inter-American Arbitration has this day been signed at Washington by Plenipotentiaries of the Governments of Venezuela, Chile, Bolivia, Uruguay, Costa Rica, Perú, Honduras, Guatemala, Haiti, Ecuador, Colombia, Brazil, Panamá, Paraguay, Nicaragua, Mexico, El Salvador, the Dominican Republic, Cuba, and the United States of America;

Whereas, that treaty by its terms excepts certain controversies from the stipulations thereof;

Whereas, by means of reservations attached to the treaty at the time of signing, ratifying or adhering, certain other controversies have been or may be also excepted from the stipulations of the treaty or reserved from the operation thereof;

Whereas, it is deemed desirable to establish a procedure whereby such exceptions or reservations may from time to time be abandoned in whole or in part by the Parties to said treaty, thus progressively extending the field of arbitration;

The Governments named above have agreed as follows:

Article 1. Any Party to the General Treaty of Inter-American Arbitration signed at Washington the fifth day of January, 1929, may at any time deposit with the Department of State of the United States of America an appropriate instrument evidencing that it has abandoned in whole or in part the exceptions from arbitration stipulated in the said treaty or the reservation or reservations attached by it thereto.

Art. 2. A certified copy of each instrument deposited with the Department of State of the United States of America pursuant to the provisions of Article 1 of this protocol shall be transmitted by

the said Department through diplomatic channels to every other Party to the above-mentioned General Treaty of Inter-American Arbitration.

In witness whereof the above-mentioned Plenipotentiaries have signed this protocol in English, Spanish, Portuguese, and French and hereunto affix their respective seals.

Done at the city of Washington, on this fifth day of January, 1929.

[Signatures omitted.]

Parties to the Inter-American Convention on Arbitration[2]

(April 1, 1935)

Brazil	Mexico
Chile	Nicaragua
Cuba	Panamá
Dominican Republic	Perú
Guatemala	El Salvador
Haiti	Venezuela

Total: 12

[2] With important reservations, in most cases. See 4 Hudson, *International Legislation,* pp. 2631–2633. On April 16, 1935, a ratification by the United States was deposited, with the understanding that the special agreement should be made in each case only with the advice and consent of the Senate. *U.S. Treaty Series,* No. 886.

APPENDIX VIII

INTER-AMERICAN CONVENTION ON CONCILIATION, WASHINGTON, JANUARY 5, 1929.[1]

The Governments of Venezuela, Chile, Bolivia, Uruguay, Costa Rica, Perú, Honduras, Guatemala, Haiti, Ecuador, Colombia, Brazil, Panamá, Paraguay, Nicaragua, Mexico, El Salvador, the Dominican Republic, Cuba, and the United States of America, represented at the Conference on Conciliation and Arbitration, assembled at Washington, pursuant to the Resolution adopted on February 18, 1928, by the Sixth International Conference of American States held in the City of Habana:

Desiring to demonstrate that the condemnation of war as an instrument of national policy in their mutual relations, set forth in the above-mentioned resolution, constitutes one of the fundamental bases of inter-American relations;

Animated by the purpose of promoting, in every possible way, the development of international methods for the pacific settlement of differences between the States;

Being convinced that the "Treaty to Avoid or Prevent Conflicts between the American States," signed at Santiago de Chile, May 3, 1923, constitutes a notable achievement in inter-American relations, which it is necessary to maintain by giving additional prestige and strength to the action of the commissions established by Articles 3 and 4 of the aforementioned treaty;

Acknowledging the need of giving conventional form to these purposes have agreed to enter into the present Convention, for which purpose they have appointed Plenipotentiaries as follows:

Venezuela: Carlos F. Grisanti, Francisco Arroyo Parejo;
Chile: Manuel Foster Recabarren, Antonio Planet;
Bolivia: Eduardo Diez de Medina;
Uruguay: José Pedro Varela;
Costa Rica: Manuel Castro Quesada, José Tible-Machado;
Perú: Hernán Velarde, Victor M. Maúrtua;
Honduras: Rómulo Durón, Marcos López Ponce;

[1] From 4 Hudson, *International Legislation,* p. 2635. The French, Portuguese, and Spanish versions are also authoritative.

Guatemala: Adrián Recinos, José Falla;
Haiti: Auguste Bonamy, Raoul Lizaire;
Ecuador: Gonzalo Zaldumbide;
Colombia: Enrique Olaya Hererra, Carlos Escallón;
Brazil: S. Gurgel do Amaral, A. G. de Araujo-Jorge;
Panamá: Ricardo J. Alfaro, Carlos L. López;
Paraguay: Eligio Ayala;
Nicaragua: Máximo H. Zepeda, Adrián Recinos, J. Lisandro Medina;
Mexico: Fernando González Roa, Benito Flores;
El Salvador: Cayetano Ochoa, David Rosales, Jr.;
Dominican Republic: Angel Morales, Gustavo A. Díaz;
Cuba: Orestes Ferrara, Gustavo Gutiérrez;
United States of America: Frank B. Kellogg, Charles Evans Hughes.

Who, after having deposited their full powers, which were found to be in good and due form by the Conference, have agreed as follows:

Article 1. The High Contracting Parties agree to submit to the procedure of conciliation established by this convention all controversies of any kind which have arisen or may arise between them for any reason and which it may not have been possible to settle through diplomatic channels.

Art. 2. The Commission of Inquiry to be established pursuant to the provisions of Article 4 of the Treaty signed in Santiago de Chile on May 3, 1923, shall likewise have the character of Commission of Conciliation.

Art. 3. The Permanent Commissions which have been established by virtue of Article 3 of the Treaty of Santiago de Chile of May 3, 1923, shall be bound to exercise conciliatory functions, either on their own motion when it appears that there is a prospect of disturbance of peaceful relations, or at the request of a Party to the dispute, until the Commission referred to in the preceding article is organized.

Art. 4. The conciliatory functions of the Commission described in Article 2 shall be exercised on the occasions hereinafter set forth:

(1) The Commission shall be at liberty to begin its work with an effort to conciliate the differences submitted to its examination with a view to arriving at a settlement between the Parties.

(2) Likewise the same Commission shall be at liberty to en-

deavor to conciliate the Parties at any time which in the opinion of the Commission may be considered to be favorable in the course of the investigation and within the period of time fixed therefor in Article 5 of the Treaty of Santiago de Chile of May 3, 1923.

(3) Finally, the Commission shall be bound to carry out its conciliatory function within the period of six months which is referred to in Article 7 of the Treaty of Santiago de Chile of May 3, 1923.

The Parties to the controversy may, however, extend this time, if they so agree and notify the Commission in due time.

Art. 5. The present convention does not preclude the High Contracting Parties, or one or more of them, from tendering their good offices or their mediation, jointly or severally, on their own motion or at the request of one or more of the Parties to the controversy; but the High Contracting Parties agree not to make use of those means of pacific settlement from the moment that the Commission described in Article 2 is organized until the final act referred to in Article 11 of this convention is signed.

Art. 6. The function of the Commission, as an organ of conciliation, in all cases specified in Article 2 of this convention, is to procure the conciliation of the differences subject to its examination by endeavoring to effect a settlement between the Parties.

When the Commission finds itself to be within the case foreseen in paragraph 3 of Article 4 of this convention, it shall undertake a conscientious and impartial examination of the questions which are the subject of the controversy, shall set forth in a report the results of its proceedings, and shall propose to the Parties the bases of a settlement for the equitable solution of the controversy.

Art. 7. Except when the Parties agree otherwise, the decisions and recommendations of any Commission of Conciliation shall be made by a majority vote.

Art. 8. The Commission described in Article 2 of this convention shall establish its rules of procedure. In the absence of agreement to the contrary, the procedure indicated in Article 4 of the Treaty of Santiago de Chile of May 3, 1923, shall be followed.

Each Party shall bear its own expenses and a proportionate share of the general expenses of the Commission.

Art. 9. The report and the recommendations of the Commission, insofar as it may be acting as an organ of conciliation, shall not have the character of a decision nor an arbitral award, and

shall not be binding on the Parties either as regards the exposition or interpretation of the facts or as regards questions of law.

Art. 10. As soon as possible after the termination of its labors the Commission shall transmit to the Parties a certified copy of the report and of the bases of settlement which it may propose.

The Commission in transmitting the report and the recommendations to the Parties shall fix a period of time, which shall not exceed six months, within which the Parties shall pass upon the bases of settlement above referred to.

Art. 11. Once the period of time fixed by the Commission for the Parties to make their decisions has expired, the Commission shall set forth in a final act the decision of the Parties, and if the conciliation has been effected, the terms of the settlement.

Art. 12. The obligations set forth in the second sentence of the first paragraph of Article 1 of the Treaty of Santiago de Chile of May 3, 1923, shall extend to the time when the final act referred to in the preceding article is signed.

Art. 13. Once the procedure of conciliation is under way it shall be interrupted only by a direct settlement between the Parties or by their agreement to accept absolutely the decision *ex aequo et bono* of an American Chief of State or to submit the controversy to arbitration or to an international court.

Art. 14. Whenever for any reason the Treaty of Santiago de Chile of May 3, 1923, does not apply, the Commission referred to in Article 2 of this convention shall be organized to the end that it may exercise the conciliatory functions stipulated in this convention; the Commission shall be organized in the same manner as that prescribed in Article 4 of said treaty.

In such cases, the Commission thus organized shall be governed in its operation by the provisions, relative to conciliation, of this convention.

Art. 15. The provisions of the preceding article shall also apply with regard to the Permanent Commissions constituted by the aforementioned Treaty of Santiago de Chile, to the end that said Commissions may exercise the conciliatory functions prescribed in Article 3 of this convention.

Art. 16. The present convention shall be ratified by the High Contracting Parties in conformity with their respective constitutional procedures, provided that they have previously ratified the Treaty of Santiago de Chile, of May 3, 1923.

The original convention and the instruments of ratification shall be deposited in the Ministry for Foreign Affairs of the Republic of Chile which shall give notice of the ratifications through diplomatic channels to the other signatory Governments and the convention shall enter into effect for the High Contracting Parties in the order that they deposit their ratifications.

This convention shall remain in force indefinitely, but it may be denounced by means of notice given one year in advance at the expiration of which it shall cease to be in force as regards the Party denouncing the same, but shall remain in force as regards the other signatories. Notice of the denunciation shall be addressed to the Ministry for Foreign Affairs of the Republic of Chile which will transmit it for appropriate action to the other signatory Governments.

Any American State not a signatory of this convention may adhere to the same by transmitting the official instrument setting forth such adherence to the Ministry for Foreign Affairs of the Republic of Chile which will notify the other High Contracting Parties thereof in the manner heretofore mentioned.

In witness whereof the above-mentioned Plenipotentiaries have signed this convention in English, Spanish, Portuguese and French and hereunto affix their respective seals.

Done at the city of Washington, on this fifth day of January, 1929.

[Signatures omitted.]

Additional Protocol, Montevideo, December 26, 1933[2]

The High Contracting Parties of the General Convention of Inter-American Conciliation of the 5th of January, 1929, convinced of the undeniable advantage of giving a permanent character to the Commissions of Investigation and Conciliation to which Article 2 of said Convention refers, agree to add to the aforementioned Convention the following and additional Protocol.

Article 1. Each country signatory to the Treaty signed in Santiago, Chile, the 3rd of May, 1923, shall name, as soon as possible, by means of a bilateral agreement which shall be recorded in a

[2] From *Final Act of the Seventh International Conference of American States,* p. 185. The Spanish version is also authoritative.

simple exchange of notes with each one of the other signatories of the aforementioned Treaty, those members of the various commissions provided for in Article 4 of said Treaty. The commissions so named shall have a permanent character and shall be called Commissions of Investigation and Conciliation.

Art. 2. Any of the contracting parties may replace the members which have been designated, whether they be nationals or foreigners; but, at the same time, the substitute shall be named. In case the substitution is not made, the replacement shall not be effective.

Art. 3. The commissions organized in fulfillment of Article 3 of the aforementioned Treaty of Santiago, Chile, shall be called Permanent Diplomatic Commissions of Investigation and Conciliation.

Art. 4. To secure the immediate organization of the commissions mentioned in the first Article hereof, the High Contracting Parties engage themselves to notify the Pan American Union at the time of the deposit of the ratification of the present Additional Protocol in the Ministry of Foreign Relations of the Republic of Chile, the names of the two members whose designation they are empowered to make by Article 4 of the Convention of Santiago, Chile, and said members, so named, shall constitute the members of the Commissions which are to be organized with bilateral character in accordance with this Protocol.

Art. 5. It shall be left to the Governing Board of the Pan American Union to initiate measures for bringing about the nomination of the fifth member of each Commission of Investigation and Conciliation in accordance with the stipulation established in Article 4 of the Convention of Santiago, Chile.

Art. 6. In view of the character which this Protocol has as an addition to the Convention of Conciliation of Washington, of January 5, 1929, the provision of Article 16 of said Convention shall be applied thereto.

In witness whereof, the Plenipotentiaries hereinafter indicated have set their hands and their seals to this Additional Protocol in English, and Spanish, in the city of Montevideo, Republic of

Uruguay, this twenty-sixth day of the month of December in the year nineteen hundred and thirty-three.

United States of America: Alexander W. Weddell, J. Butler Wright.

Uruguay: A. Mañé, José Pedro Varela, Mateo Marques Castro, Dardo Regules, Sofía Alvarez Vignoli de Demicheli, Teófilo Piñeyro Chain, Luis A. de Herrera, Martín R. Echegoyen, José G. Antuña, J. C. Blanco, Pedro Manini Ríos, Rodolfo Mezzera, Octavio Morató, Luis Morquio, José Serrato.

Ecuador: A. Aguirre Aparicio, Arturo Scarone.

Chile: J. Ramón Gutiérrez, F. Figueroa, B. Cohen.

Parties to the Inter-American Convention on Conciliation

(April 1, 1935)

United States of America	Haiti
Brazil	Mexico
Chile	Nicaragua
Cuba	Panamá
Dominican Republic	Perú
Ecuador	El Salvador
Guatemala	Uruguay

Total: 14

APPENDIX IX

ANTI-WAR TREATY ("SAAVEDRA-LAMAS TREATY"), RIO DE JANEIRO, OCTOBER 10, 1933.[1]

The States designated below, in the desire to contribute to the consolidation of peace, and to express their adherence to the efforts made by all civilized nations to promote the spirit of universal harmony;

To the end of condemning wars of aggression and territorial acquisitions that may be obtained by armed conquest, making them impossible and establishing their invalidity through the positive provisions of this treaty, and in order to replace them with pacific solutions based on lofty concepts of justice and equity;

Convinced that one of the most effective means of assuring the moral and material benefits which peace offers to the world, is the organization of a permanent system of conciliation for international disputes, to be applied immediately on the violation of the principles mentioned;

Have decided to put these aims of non-aggression and concord in conventional form, by concluding the present treaty, to which end they have appointed the undersigned plenipotentiaries, who, having exhibited their respective full powers, found to be in good and due form, have agreed upon the following:

Article 1. The High Contracting Parties solemnly declare that they condemn wars of aggression in their mutual relations or those with other states, and that the settlement of disputes or controversies of any kind that may arise among them shall be effected only by the pacific means which have the sanction of international law.

Art. 2. They declare that as between the High Contracting Parties, territorial questions must not be settled by violence, and that they will not recognize any territorial arrangement which is not obtained by pacific means, nor the validity of the occupation or acquisition of territories that may be brought about by fôrce of arms.

Art. 3. In case of non-compliance by any state engaged in a

[1] Translation from *Department of State Publication* No. 666. The original is in Portuguese and Spanish versions.

dispute, with the obligations contained in the foregoing articles, the contracting states undertake to make every effort for the maintenance of peace. To that end they will adopt in their character as neutrals a common and solidary attitude; they will exercise the political, juridical or economic means authorized by international law; they will bring the influence of public opinion to bear but will in no case resort to intervention either diplomatic or armed; subject to the attitude that may be incumbent on them by virtue of other collective treaties to which such states are signatories.

Art. 4. The High Contracting Parties obligate themselves to submit to the conciliation procedure established by this treaty, the disputes specially mentioned and any others that may arise in their reciprocal relations, without further limitations than those enumerated in the following article, in all controversies which it has not been possible to settle by diplomatic means within a reasonable period of time.

Art. 5. The High Contracting Parties and the states which may in the future adhere to this treaty, may not formulate at the time of signature, ratification or adherence, other limitations to the conciliation procedure than those which are indicated below:

(a) Differences for the solution of which treaties, conventions, pacts or pacific agreements of any kind whatever may have been concluded, which in no case shall be considered as annulled by this agreement, but supplemented thereby in so far as they tend to assure peace; as well as the questions or matters settled by previous treaties;

(b) Disputes which the parties prefer to solve by direct settlement or submit by common agreement to an arbitral or judicial solution;

(c) Questions which international law leaves to the exclusive competence of each state, under its constitutional system, for which reason the parties may object to their being submitted to the conciliation procedure before the national or local jurisdiction has decided definitively; except in the case of manifest denial or delay of justice, in which case the conciliation procedure shall be initiated within a year at the latest;

(d) Matters which affect constitutional precepts of the parties to the controversy. In case of doubt, each party shall obtain the reasoned opinion of its respective tribunal or supreme court of justice, if the latter should be invested with such powers.

The High Contracting Parties may communicate, at any time and in the manner provided for by Article 15, an instrument stating that they have abandoned wholly or in part the limitations established by them in the conciliation procedure.

The effect of the limitations formulated by one of the contracting parties shall be that the other parties shall not consider themselves obligated in regard to that party save in the measure of the exceptions established.

Art. 6. In the absence of a permanent Conciliation Commission or of some other international organization charged with this mission by virtue of previous treaties in effect, the High Contracting Parties undertake to submit their differences to the examination and investigation of a conciliation Commission which shall be formed as follows, unless there is an agreement to the contrary of the parties in each case;

The Conciliation Commission shall consist of five members. Each party to the controversy shall designate a member who may be chosen by it from among its own nationals. The three remaining members shall be designated by common agreement by the parties from among the nationals of third Powers, who must be of different nationalities, must not have their customary residence in the territory of the interested parties nor be in the service of any of them. The parties shall choose the President of the Conciliation Commission from among the said three members.

If they cannot arrive at an agreement with regard to such designations, they may entrust the selection thereof to a third Power or to some other existing international organism. If the candidates so designated are rejected by the parties or by any one of them, each party shall present a list of candidates equal in number to that of the members to be selected, and the names of those to sit on the Conciliation Commission shall be determined by lot.

Art. 7. The tribunals or supreme courts of justice which, in accordance with the domestic legislation of each state, may be competent to interpret, in the last or the sole instance and in matters under their respective jurisdiction, the constitution, treaties, or the general principles of the law of nations, may be designated preferentially by the High Contracting Parties to discharge the duties entrusted by the present treaty to the Conciliation Commission. In this case the tribunal or court may be constituted by the whole bench or may designate some of its members

to proceed alone or by forming a mixed commission with members of other courts or tribunals, as may be agreed upon by common accord between the parties to the dispute.

Art. 8. The Conciliation Commission shall establish its own rules of procedure, which shall provide in all cases for hearing both sides.

The parties to the controversy may furnish and the Commission may require from them all the antecedents and information necessary. The parties may have themselves represented by delegates and assisted by advisers or experts, and also present evidence of all kinds.

Art. 9. The labors and deliberations of the Conciliation Commission shall not be made public except by a decision of its own to that effect, with the assent of the parties.

In the absence of any stipulations to the contrary, the decisions of the Commission shall be made by a majority vote, but the Commission may not pronounce judgment on the substance of the case except in the presence of all its members.

Art. 10. It is the duty of the Commission to secure the conciliatory settlement of the disputes submitted to its consideration.

After an impartial study of the questions in dispute, it shall set forth in a report the outcome of its work and shall propose to the parties bases of settlement by means of a just and equitable solution.

The report of the Commission shall in no case have the character of a final decision or arbitral award either with respect to the exposition or the interpretation of the facts, or with regard to the considerations or conclusions of law.

Art. 11. The Conciliation Commission must present its report within one year counting from its first meeting unless the parties should decide by common agreement to shorten or extend this period.

The conciliation procedure having been once begun may be interrupted only by a direct settlement between the parties or by their subsequent decision to submit the dispute by common accord to arbitration or to international justice.

Art. 12. In communicating its report to the parties, the Conciliation Commission shall fix for them a period which shall not exceed six months, within which they must decide as to the bases of the settlement it has proposed. On the expiration of this term,

the Commission shall record in a final act the decision of the parties.

This period having expired without acceptance of the settlement by the parties, or the adoption by common accord of another friendly solution, the parties to the dispute shall regain their freedom of action to proceed as they may see fit within the limitations flowing from Articles 1 and 2 of this treaty.

Art. 13. From the initiation of the conciliatory procedure until the expiration of the period fixed by the Commission for the parties to make a decision, they must abstain from any measure prejudicial to the execution of the agreement that may be proposed by the Commission and, in general, from any act capable of aggravating or prolonging the controversy.

Art. 14. During the conciliation procedure the members of the Commission shall receive honoraria the amount of which shall be established by common agreement by the parties to the controversy. Each of them shall bear its own expenses, and a moiety of the joint expenses or honoraria.

Art. 15. The present treaty shall be ratified by the High Contracting Parties as soon as possible, in accordance with their respective constitutional procedures.

The original treaty and the instruments of ratification shall be deposited in the Ministry of Foreign Relations and Worship of the Argentine Republic, which shall communicate the ratifications to the other signatory states. The treaty shall go into effect between the High Contracting Parties 30 days after the deposit of the respective ratifications, and in the order in which they are effected.

Art. 16. This treaty shall remain open to the adherence of all states.

Adherence shall be effected by the deposit of the respective instrument in the Ministry of Foreign Relations and Worship of the Argentine Republic, which shall give notice thereof to the other interested states.

Art. 17. The present treaty is concluded for an indefinite time, but may be denounced by one year's notice, on the expiration of which the effects thereof shall cease for the denouncing state, and remain in force for the other states which are parties thereto, by signature or adherence.

The denunciation shall be addressed to the Ministry of Foreign Relations and Worship of the Argentine Republic, which shall transmit it to the other interested states.

In witness whereof, the respective plenipotentiaries sign the present treaty in one copy, in the Spanish and Portuguese languages, and affix their seals thereto at Rio de Janeiro, D. F., on the tenth day of the month of October one thousand nine hundred thirty-three.

[Here follow the signatures of the plenipotentiaries of *Argentina, Brazil, Chile* (with reservations), *Mexico, Paraguay,* and *Uruguay*.]

Position of the Saavedra-Lamas Treaty

(August 1, 1935)

(1) This Treaty had not come into force on August 1, 1935. Of the original signatories, only Chile had deposited a ratification (August 25, 1934).

(2) On August 1, 1935, various States had adhered or formally expressed an intention to adhere to the Treaty; *viz.,* United States of America, Bolivia, Bulgaria, Colombia, Costa Rica, Cuba, Czechoslovakia, Dominican Republic, Ecuador, Greece, Guatemala, Haiti, Honduras, Italy, Nicaragua, Panama, Peru, Portugal, Rumania, El Salvador, Spain, Turkey, Venezuela, and Yugoslavia. Ratifications of adherences had been deposited by the United States of America (August 10, 1934), and the Dominican Republic (September 17, 1934); and adherences had been made definitive by Italy (March 14, 1934), Rumania (May 14, 1935), and Yugoslavia (May 9, 1935). The effectiveness of these adherences depends upon the coming into force of the Treaty.

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